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Official Report of Debates (Hansard)

Tuesday 29 January 1991

Standing committee on resources development

Zebra mussels and
purple loosestrife

Assemblée législative de l'Ontario

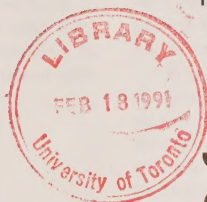
Première session, 35^e législature

Journal des débats (Hansard)

Le mardi 29 janvier 1991

Comité permanent du développement des ressources

Moules zébrées et
salicaire commune pourpre



Chair: Bob Huget
Clerk: Harold Brown

Président : Bob Huget
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday 29 January 1991

The committee met at 1007 in room 228.

ZEBRA MUSSELS AND PURPLE LOOSESTRIPE

Consideration of the designated matter, pursuant to standing order 123, relating to zebra mussels and purple loosestrife.

The Chair: Order, please. I apologize for the slight delay, but the first morning, I guess, there are logistical problems. If you go to your agenda for Tuesday 29 January, you will see the first item on the agenda is a staff briefing. It is customary that these briefings be held in camera, and if I can get agreement to proceed with that, then we will proceed with the in camera staff briefing. Is that agreed? Recorded as agreed, and we will proceed with it in camera briefing.

The committee continued in camera at 1007.

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JOE LEACH

The Chair: Our first witness this morning is Dr Joe Leach from the Ministry of Natural Resources at the Lake Erie Fisheries Station in Wheatley. Dr Leach's presentation will put focus on the introduction of new species into perspective with existing species in terms of competition for resources and habitats. Dr Leach, you can go ahead with your material.

Dr Leach: I plan to give you a brief overview of introductions into the Great Lakes going back to the early 1800s. This overview is based on a study which was conducted by Dr Edward Mills of Cornell University and myself. The study was in response to a request from the board of technical experts of the Great Lakes Fishery Commission. I will proceed into this now with my slides.

Why are we concerned about introduced species? First of all, they create what we term biological pollution. They are difficult to eradicate. I cannot think of a single species that has become established and has been eradicated. They create new instabilities—the sea lamprey and its impact on the upper Great Lakes is a good example of that—and they create an uncertain ecological and economic future. The zebra mussel has us in that phase now.

We defined an "exotic organism" as a successfully reproducing species transported by human activities into the Great Lakes, and an "entry vector" as the most probable means by which that species arrived here through human activity.

How many species have come in and what are they? We do not know how many species have come in; it could be thousands. But we know that 115 species have become established since 1810. If you look at them in terms of groups, the aquatic plants make up the largest group with 28%, the algae with 23%, but the fish have made up al-

most one fifth of the group with 19% and the rest of them are invertebrates or fish diseases.

How did they get here? If you break down the entry vectors, you will see that ships have been the biggest vector with 34%; accidental release, 23%; deliberate release, 9%; canals, only 5%, but canals have been responsible for bringing in some of the most important invaders. We do not know how one quarter of the species arrived here.

Looking at the ship vector in a little more detail, ballast water has been the largest component of that vector with 68% and solid ballast is 23%. Solid ballast was more important in earlier days and has been responsible for bringing in some of our aquatic plant species.

What species came in in ballast water? A lot of algae species came in and some fish species and, as I mentioned earlier, some of the aquatic plant species have come in through the solid ballast mechanism and also some algae species. This is an ocean-crossing ship which is docked at Duluth taking on grain. It probably came across the ocean in ballast and removed that ballast in western Lake Superior or in Duluth harbour, and you can tell by the water line on the ship that it is riding high now. When it receives its full cargo of grain, that line will be down. Ships have quite an array of dedicated ballast tanks for taking on water to create stability. As much as a million gallons of ballast can be held in one of these on the voyage across.

This entry vector has attracted a lot of recent attention. The International Joint Commission and the Great Lakes Fishery Commission have made a joint appeal to the governments of Canada and the US to take some strong action to control this vector.

Where do these exotics come from? Almost half of them come from Europe and almost a quarter of them come from the Atlantic coast. These are the two main areas that have impacted the Great Lakes. When did they come in? About 46% of them have come in since 1960, and please remember that the Seaway opened in 1959.

We have here a time line of some of the more major species that have impacted the Great Lakes from 1810. We have picked 15 species which we think have been significant. There seem to be three groups of them in terms of invasion: an early group, including cladophora, alewife and sea lamprey in the early 1800s; a late-1800s group including the purple loosestrife, the common carp, the brown trout; and a later group including the fish diseases, Eurasian milfoil, white perch, spiny water flea, ruffe and zebra mussel.

I will go into a little more detail on some of these major species and their impacts. This is the purple loosestrife, which is a beautiful plant. Unfortunately, it displaces some of our native aquatic plants which are useful for waterfowl. The dispersion of this plant has been fairly rapid across North America. It has a unique sea dispersal

method which, interestingly enough, was described by Charles Darwin back in the 1800s.

I have some maps showing the progression of this species across North America. It was first established in 1876. It utilized the canal system. See the Erie Canal here, which links to the Atlantic seaboard through the Hudson River system. It links into both Lake Erie and Lake Ontario. This was the dispersal in 1880, the dispersal in 1900, and you will see it had reached the Great Lakes. By 1940 it had become established west of the Great Lakes and by 1985 it has reached right across the North American continent.

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The sea lamprey is probably an example of one of the worst invaders we have suffered. It has been in Lake Ontario since the early 1800s. It found its way through the canal system into Lake Erie by 1921 and moved on up into the upper Great Lakes, where it devastated the lake trout and lake whitefish populations. The Canadian and US governments have spent millions of dollars in attempts to control this invader, with a certain degree of success.

The European carp, which was brought into North America as a food item, is now ubiquitous in the Great Lakes in shallow water areas. It destroys habitat and is considered to be a pest.

The rainbow smelt, which comes in from the Atlantic seaboard through the canal system, found its way into Lake Erie in 1935. The fishermen started to fish for it commercially in the 1950s. It now ranks number one in terms of tonnage harvested from that lake and number three in terms of value. On the negative side, it has impacted both lake whitefish and probably the blue pike.

These are alewives, which have a nasty habit of ending up on the beaches when they die. It is another Atlantic seaboard fish which found its way into Lake Erie by 1931 and moved on up into the upper Great Lakes, where it became very abundant, particularly in Lake Michigan, perhaps due to the lack of a top predator. The sea lamprey liquidated the lake trout. Lake managers brought in Pacific salmon as a control measure for this and these have been quite successful. The alewife now is an important forage species for salmonid fisheries, particularly in Lake Michigan and Lake Ontario.

The green scum here is a green algae, cladophora, which came in in the early 1880s. It increased quite dramatically during a period of enrichment in the 1950s, 1960s and early 1970s. It abated somewhat in later years due to phosphorus control.

The upper one is a coho and the lower one is a chinook. These are Pacific salmon brought in to create salmonid sport fisheries and also to combat the alewife. They are two examples of successful invaders.

The brown trout from Europe, another example of a beneficial introduction, provides a good sport fishery, and a classic example is the rainbow trout, which is probably the most transplanted fish in the world. From the Pacific coast it is now all through eastern North America and provides an excellent sport fishery.

White perch, a warm-water fish from the eastern seaboard, found its way into Lake Erie in the 1950s. It became established and has progressed up into warm water

embayments particularly in Lake Huron and Lake Michigan. This species can outcompete our native yellow perch and is at the present time impacting yellow perch in Lake Erie.

There is an example of a benign invader. I mentioned there were a lot of invaders that have come in and we do not know what they are. This is one that came in and we know what it is and it did not succeed. It is from Europe originally from Asia, and it came in on ballast. We were not worried about it becoming established because its life history requires it to go down to the sea to spawn. We knew it would not become established in the Great Lakes and it has not.

Now I come to the three most recent invaders, which came in in the 1980s: the ruffe, the spiny water flea and the zebra mussel. The spiny water flea is found now in all the Great Lakes. It is quite abundant. There was a considerable amount of concern that it would impact fisheries through alteration in the food web, and it perhaps has done that in Lake Michigan. However, we find in Lake Erie that it is preyed upon quite severely by yellow perch and other species and seems to be held in check, so that we do not think it will be as serious a pest as originally considered.

The ruffe, the European perch-type fish, which was found in Duluth harbour in the 1980s, came in on ballast undoubtedly and spread into parts of western Lake Superior and has not moved much from there. However, there is a lot of shipping from Duluth down into the lower Great Lakes and we suspect that it could be carried in on that route. We are concerned about it because it can outcompete yellow perch. This is what happened in Loch Lomond in Scotland when the ruffe invaded there in the early 1980s. The purple bars indicate the increase in ruffe and the green bars indicate the decline in the abundance of yellow perch.

Finally, the zebra mussel, which was first found in June 1988 and has spread quite dramatically. You will be hearing a lot about the zebra mussel in the presentations that follow mine and I will not say much about it. It found a vacant niche in the Great Lakes. There is no other bivalve organism and it has become superabundant, particularly in Lake Erie and Lake St Clair.

Just to sum up, the Great Lakes have been subject to invasions from at least the early 1800s. One out of every 10 exotic species has significant ecological or economic impact. Almost half of them have become established since the opening of the St Lawrence Seaway and about a third of them have entered the Great Lakes through ship activities.

That ends my presentation.

The Chair: Thank you, Dr Leach. Questions?

Mr Waters: You have shown us all these infestations that we have had in the past. Is there any way of predicting what is going to be coming in the future, and if so, when?

Dr Leach: That is a very good question. I wish I had a good answer for you. It is virtually impossible to tell you what will come in. What have come in and been successful are usually those species which are similar in climatic and adaptive requirements from their native situation. I cannot

much more than that, other than it will probably be a small organism, it will probably come in ballast, but what would be, we have no way of knowing. These are always unknowns.

Mr Waters: At present there is probably something in Europe travelling around. I was just wondering if there was anything that seems to be spreading in Europe that we could be expecting in ballast water in the future—that is basically it—that we do not have at present.

Dr Leach: Marine traffic in Europe has been going on for a long period of time and there is very likely less opportunities for new invaders to become established, new situations in Europe. This problem with introductions is a global thing. We are going through a period now of homogenization of biota on a global basis and it is largely because of the increase in shipping traffic through all areas of the world.

Mr Ruprecht: From your perspective, do you think the department has sufficient data on the zebra mussel, its problems and the extent to which it will cause damage in the future? Do you have enough data on all of that?

Dr Leach: I would not think so, no. This is a recent invader. It is a new situation. We are finding already that it is not following the same patterns as in Europe in terms of growth. I would think we need to study this organism more intensely.

Mr Ruprecht: Mr Chairman, if that is the case, I would think that what you would want to do is to ensure that sufficient resources are made available to the department so that we can have data in order to work quite quickly to overcome some of these problems.

In terms of the process of determining the problems and getting the data, is the department prepared to act quickly on any of the new invaders or any of the new species that come into Ontario, especially in this case into our waterways, which will then affect not only the fish life in the water but also the fauna and other aspects of new species that are introduced into the Great Lakes basin?

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Dr Leach: I think some of the presenters following me will be in a better position to answer that than myself. Just looking at the zebra mussel problem, when we first discovered it in the summer of 1988, we acted very quickly to get as much information as we could about it in terms of what happened to it in Europe. Also, we followed its progress quite quickly, in Lake Erie particularly.

Mr Ramsay: Dr Leach, at the very beginning of your presentation, you listed for us five potentially negative consequences of the introduction of exotics to the ecosystem in Ontario. I take it from that that also applies to the voluntary introductions, not just the involuntary ones.

Dr Leach: Most of the voluntary ones have been beneficial invaders. The rainbow trout is a classic example of a very beneficial invader which was deliberately brought here and has reproduced successfully and has become a very important component of the sport fisheries. When I was talking about impacts, those 15 species I listed, I was talking in terms of significant economic and ecological

impact and I was including some beneficial invaders as well.

Mr Ramsay: As we become more aware, though, that we are obviously very susceptible here in Ontario and North America to invasive species, are we taking more care in our voluntary introductions into the environment? Do we have a regime of class environmental assessments, for example?

Dr Leach: Yes, we have, and some of the speakers after me are in a better position to give you full details of that process.

Mr Arnott: Dr Leach, if we look at this thing in a historical perspective, it appears that the enhancement of Great Lakes shipping from international ports of origin is generally creating an invasion of species that are giving us problems. Is it fair to say that in absolute terms, as Great Lakes shipping is increased through national trade patterns, I suppose, in the future, we are going to be faced with more and more invasive species of the sort?

Dr Leach: Yes, certainly the potential for more invaders is there and unless there is some change taking better control of the management of ballast, that would definitely be subject to further invasion.

Mr Cleary: Would you care to touch a bit on winter or summer temperature of water and things like that that zebra mussels survive best in?

Dr Leach: Yes. The ecological requirements of zebra mussels are fairly well known. Temperature requirements: They will cover a wide span of temperature and in Europe they do in fact cover quite a wide latitude. When you transport that latitude to North America, the potential for invasion is quite substantial, right across North America based on temperature alone. There are other ecological requirements, such as calcium and pH, which also affect the dispersion.

The Chair: There being no further questions, thank you very much for your presentation, Dr Leach, and thank you very much for coming this morning.

GERRY MACKIE

The Chair: Our next witness is Dr Gerry Mackie from the department of zoology, University of Guelph. Dr Mackie has been working on the zebra mussel problem since it was first recognized and he will summarize current research findings and suggest priorities for future research needs.

Dr Mackie: I just gave a presentation at the University of Alberta—in fact, two presentations—so the handout that you are getting now has two abstracts on those two talks. Basically, what I have done is take slides from each of those talks and combine them into this one presentation, so you will not find the slides in any particular order with respect to your handout. However, I think the story will unfold as we go along.

This is actually the first specimen that was turned in, to me at least. I am not sure if it was the first one found, but it was the first one turned in to me. This is the one that I identified as *Dreissena polymorpha*, easily characterized by the zebra stripe pattern; that is, alternating yellow and

black bands in a zigzag pattern. The animal below is called a unionid clam, or one of our native clams. As it turns out, the zebra mussel is having a devastating impact on this group and I will give you some data to illustrate that in a minute.

The only other *Dreissena* that we have in North America is a brackish water species that belongs to another genus called *mytilopsis*. It is currently restricted to the east coast of North America and in fact originated in the southeastern states, Florida, the Carolinas and so on, and has since migrated northward and is now in the North Atlantic states, that is, New York and so on, and we expect that both *Dreissena* and this species are going to meet. Both are very characteristic in that they are tenacious. They attach to almost any kind of substrate. I have shown here an unionid clam, or one of our native clams, basically to give you some idea of how big the zebra mussel is. You can see in this slide that the zebra mussels are confined to the rear end of this unionid clam and it is the rear end only because the rest of that clam sticks in mud and is not exposed to infestation by the zebra mussels.

This is a cross-section through a zebra mussel. This area here is the foot. On each side here are the gills. This pinkish structure right in the middle of the foot, where there is a canal right dead centre, is called the byssal gland and it is this gland that secretes a liquid that solidifies in contact with the water.

These threads that are attached to a substrate need a firm substrate to attach to. Zebra mussels cannot survive in mud or sand. They must have a hard substrate to survive. They can secrete as many as 12 threads a day, according to the European literature, and we have found adults that have as many as 200 threads attaching a single zebra mussel to the substrate. Those threads can be attached directly to the rock it is on or to neighbouring individuals as well.

For example, I have shown here in a sketch one zebra mussel shown on the end, and that is with the stripe down the centre. There is a smaller one in the middle and one on its side. You can see all those byssal threads. Some are attached to the rock, some are attached to the neighbouring individuals. When those individuals die, they do not leave the substrate; they stay there because those byssal threads are holding each other in place.

Anything in the water will be attacked by the zebra mussels, or at least infestations will occur on almost anything, except copper plate. Concrete bricks or blocks, cement walls and so on are particularly common substrates because of the calcium in those substrates. There is a unionid clam or native clam in the middle here. You can see some zebra mussels on it. We have done several experiments to see if there are any kinds of materials that will resist zebra mussel infestations. We have tried all kinds of plastics, including Teflon, and they attached to Teflon. The only material that resists them is copper, and that is after one year of experimentation. That experiment is going on now and it will be two years old at the end of next summer.

This is a cross-section through the female gonad. The zebra mussels are separate sexes. There is a female individual and a male individual and you can see all the eggs

within these follicles. There are several follicles or tubes. If you can follow this arrow here, that is one follicle, and within that follicle are several eggs. One female can produce as many as 30,000 eggs in its first year of reproductive life and up to 40,000 each of its second and third years.

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That was in May. By the end of September all of the eggs are released. So you see all of these follicles are empty. The reproductive period runs from about June—we saw the larvae as late as November this year—so the window is roughly May to November for the presence of zebra mussel larvae.

As far as the males are concerned, the testes are enormous. This is a very ripe male and the gonad in this particular specimen covered about 50% of the animal. Again, by the end of September all of the sperm have been released so you do not find any sperm in the sperm ducts.

The life cycle has been very well described in the European literature and we are looking at it now and developing the times between each of the stages shown here. This is the whole life cycle. It goes through a planktonic stage, that is, a stage where the larvae swim in the water column and this is the way they are oriented in the water. They have a structure called a velum, which has cilia. Those cilia beat and help to maintain the animal's position in the water column. Over time, and that is about a week from that point down to this point, that velum is lost, it is resorbed and forms structures called siphons, which are used to bring water into and out of the animal.

As that structure is absorbed, it loses its ability to swim, so it begins to settle out and we call that the post-veliger stage. This settling stage represents the stage where it no longer has the ability to maintain itself in the water column and it settles to the bottom, secretes a thread very quickly under proper conditions and then develops into the adult. That whole event may take anywhere from two weeks to four weeks and it is inversely related to temperature. The warmer the water, the faster the development time; the colder the water, the longer the development time.

We find very different seasonal distributions of the larvae throughout all of the Great Lakes, and for this reason you have to monitor the populations of zebra mussels not only within each lake but in each location on the lake. For example, this is Lake St Clair. We found the peak abundance of larvae in about the first week of July. In the Welland Canal, at Quebec and Ontario Paper Co, it was in the middle of August, and just 15 kilometres downstream it was a week later, in about the third week of August. In Lake Ontario it is later yet. We found a huge peak in the middle of September, and we are not sure if this is noise or not.

One of the problems with Lake Ontario is that it has severe internal seiches; that is, there is a cold layer in the water column and it can rock like this. Any industry that has its intake structure, say, at this position, if that thermocline tips that way, that layer tips that way, then the cold water suddenly comes in. We think that process is limiting

the settling rate of zebra mussels in the Eastman Kodak facility.

On the Ontario side, at Lake Ontario Cement, we only began to see the larvae appear this year and the numbers really did not get much higher than 100 per cubic metre. So next year we expect to see huge increases in the numbers at Lake Ontario Cement, which is not far from Kings-on.

Not only do we see differences in spatial distribution—that is, the seasonal abundance spatially that is different at places along the lake—but seasonally as well. This is Ministry of Natural Resources data by Joe Leach for 1988 and 1989. You can see that there were two peaks in each of those years, and the peaks differed as well in each of the years. So it is really important that each of the industries that is trying to control zebra mussels monitors the abundance of the larvae in the water column, because they occur at different times in the year from one year to the next, and there may be only one peak instead of two.

We have measured the growth rate of the larvae and one of the things we look for of course is the settling individuals. Individuals tend to settle beyond 200 microns in length, so as soon as we start seeing histograms appearing at 200 microns and beyond, then we know they are in the settling stage. That is the critical point. The larvae at this size swim in the water. They really do not do anything as far as industries are concerned. However, they may have an impact on the ecology of the Great Lakes in that they may be filtering some of the food out of the water.

You can go throughout the summer just looking for those longer-length classes to look at the degree of settling. This is October and November. We were seeing larvae, for example, until 28 November this year, which is really unusual, compared to last year when they disappeared in October.

This is a veliger that has lost its ability to swim. You can see the foot here is beginning to crawl around. There are siphons formed in this region of the animal, so it starts settling, and one of the surprising things we have found this year is that those individuals can settle in a matter of two weeks; 90% that are out in the water settle in two weeks. We found this at several stations.

Here again you can see 4 September was the last time we saw the veligers, and then they started settling on 9 September. These are three- to four-day intervals that we were sampling in. In two weeks, we had 90% of those individuals settling. In other words, there really was not much difference in the numbers beyond that point.

That should be a significant fact for industries trying to control zebra mussels, because that window can be narrowed to two weeks. Remember, last year there was only one period of settlement. In previous years there were two, so they would have to isolate both of those periods. The same at Stelpipe on the Welland Canal, two weeks again basically.

One of the things we also discovered was that the settling rate may be dependent on the numbers of larvae in the water. We are only now beginning to gather these data. We have to gather substantially more, but it looks like anything below 850 per cubic metre, for example, we did

not see anything settling. Unfortunately we do not have anything between 850 and 36,000. We do not know if 10,000 is the magic number, for example, but once it gets to a certain point there is going to be a level where it will no longer increase.

These are the adults. What we have done here is take adults off rocks, measure each one and then we plot them. So we count the numbers in each length class. Those are very small length classes, something like 22 microns. Sorry, I cannot read the numbers here, but they are very small individuals, less than a millimetre in length. Each peak represents a cohort, so you can see a lot of new individuals appearing in this sample, which is I think 2 May 1989.

Those individuals grow to this point, that grows to that point and so on, so everything moves to the right. You can see a new recruitment event occurring here, so new individuals appeared again there. Those grow to that point, those grow to there and so on. If you plot those, you can determine the growth rates of the individuals.

We found that in 1988 and 1989 they grew as much as two centimetres a year. That is a lot of guesswork, because you do not know when those adults actually landed on the rock. You are presuming they landed in the fall or the spring of 1988 and 1989 respectively, but there is one way, because zebra mussels are so unique in their ability to attach, to determine exactly how old, how quickly they grow.

You can set out cement blocks such as this one here and you can see zebra mussels starting to settle in the groove. If you pull that rock every two weeks and take specimens off, you know that that block was put in on a certain date, you know when the mussels started settling on there and, if you measure them at two-week intervals, you can determine their growth rate. This is after another two weeks. You can see the block is almost completely covered by zebra mussels. If you measure them over the summer, you can confirm from the block date, which is the dashed line, that they grew 15 millimetres, compared to the 17 shown on this one site that we measured in Lake St Clair.

This is extremely fast compared to the European populations. They grow twice as fast and live half as long, it seems, in the Great Lakes. These are data from European populations. These are British populations here where they tend to grow faster than populations in Poland and Russia. So we have got a mix of these two and we are not quite sure if we have got any specimens that are particularly representative of any one country. We seem to have our own unique population, so to speak.

The data I have given you so far just give growth of individuals, how fast they grow and reproduce and so on. These are data on the population itself. We want to know when the populations are going to peak. What we have done is take data for 1987 and you have to back-calculate, because we collected clams in 1988, but the numbers that are on that clam represent those that were born in 1987, so we can go back one year. You lose some over the winter months because of ice scouring, predation and various factors of mortality.

On the vertical axis it is a log scale, so it is an order of magnitude: 1 is 10; 2 is 100; 3 is 1,000; 4 is 10,000; 5 is 100,000 per square metre. You can see that the population seems to be levelling off in Lake St Clair right now. Those solid dots are actual data, the round open dots are hypothetical data, just to try and fit to this curve. Those diagonal lines represent the amount of mortality that we see from one year to the next, so that would represent the population in the fall of one year and that would be the population in the following spring. Then they reproduce and produce that many more new individuals to the blocks. It looks like they are starting to peak out in Lake St Clair, but we need more data to confirm it because there tends to be a lot of so-called noise in ecological data.

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Where are we now? They are throughout Lake Erie, throughout Lake St Clair, three quarters of the way up Lake Ontario, at least in terms of the veliger larvae. Adults tend to be confined to the southern end of Lake Ontario, and we have spotty records in the rest of the Great Lakes, but they are not present throughout the rest of the Great Lakes. There are some data points missing here; for example, there is apparently a record in the Thunder Bay area and there is a record in the Ottawa River that has been confirmed. However, in both of these sites, the zebra mussels were found on ships. They were not actually taken from rocks from the bottom of the lakes or rivers.

What is going to limit their distribution within the Great Lakes? According to the European literature, there are two or three important criteria: one is temperature, one is calcium, and perhaps food. The European literature tends to indicate that the larvae require at least 12 milligrams of calcium to develop. However, the data are not good data. I would not call them good data, because they had 60% mortality in their control tanks. In tanks that had 100 milligrams of calcium, for example, they still had 60% mortality. So there are still a lot of experiments that have to be done with respect of calcium.

Temperatures: The European literature reports, and often we are able to show in the Great Lakes examples, that the reproductive temperature threshold is 15 degrees to 17 degrees. That is, you need 15 degrees to 17 degrees before the mussels will reproduce, and they need 10 degrees to 12 degrees before they grow. In Lake St Clair we had temperatures near 22 degrees or 23 degrees this year before we found larvae in the water. So we have to do some more experimentation there to determine if it is really absolute temperature or degree days. In fact, it might be a combination of things. We still do not fully understand what controls the reproductive events.

Chlorophyll: We are not sure yet whether the larvae play a significant role. Certainly the adults play a role, and I will give you some data in a minute to confirm that.

That is within the Great Lakes. What about the North American continent itself? We can get a pretty good idea if we look at the current distribution in Europe, and if you take the northern limit of that current distribution and across to North America and the southern limit across, you will find that roughly 75% of the North American continent, at least in terms of temperature, will have some habi-

tats available for zebra mussels. Now there are other factors like calcium that will limit that distribution, but we still need a lot of experiments to determine whether calcium is indeed a factor that will limit the distribution, and if it is, what level of calcium will limit the distribution.

The impacts on unionid clams is extraordinary. We had 16 species of native clams in Lake St Clair in 1988. There were five species found that we were not able to find living in 1990. There were an additional nine species for which we found less than 0.1 per square metre, and we have had divers go down with cameras. It is literally like a graveyard now with unionid clams lying all over with nothing but byssal threads attached to the shells. There is no question that we are going to lose some species of our native clams. Whether we lose all of them or not remains to be shown.

One of the problems that is happening is the zebra mussels get in between the gape, as we call it, in the native clams and they prevent them from closing, so that the native clams are exposed to environmental extremes. The numbers rise astronomically. For example, because zebra mussels can settle on top of one another and the numbers of mussels can grow much faster than the growth in length of our native clams, we find that the numbers of zebra mussels increase dramatically after the second or third year of infestation. This particular specimen shows about 3,000. We estimate 3,000 zebra mussels on it. As many as 15,000 zebra mussels have been counted on a single unionid clam.

Crayfish are not immune to infestations. However, these will moult periodically and they can get rid of zebra mussels, so they are a bit different than our native clams. It is like taking your jacket off and throwing it away.

One of the unique things about zebra mussels is their ability to filter water, not so much in their individual capacity to filter but in the enormous numbers of mussels that are out there. In general, one mussel can filter about one litre per day, so there is an enormous quantity of water being filtered and some of the MNR data tend to indicate—although these are not necessarily cause-effect relationships here; that is, because we saw an increase in water transparency in 1989 over 1988, that is not necessarily due to zebra mussels. However, we do need data, definitive evidence to show that zebra mussels are actually causing that increase in water clarity.

It is highly coincidental, though, that the increases are occurring as the numbers of zebra mussels are increasing, and we see this in terms of the food content in the water as well. Chlorophyll A is a measure of the amount of primary production going on in the water column, and you can see again that the amount of chlorophyll in the water decreased in 1989 relative to 1988. These again are MNR data.

We may see some impacts on our fisheries but, where there is an awful lot of study, that has to be done on the fish. One of the problems with these holistic-ecosystem-type studies is there are always natural variations occurring in the lake, and you have to be able to separate those natural variations from those that are being caused by zebra mussels. In other words, we need a control lake, and

right now all we have is the Great Lakes to go by. Unfortunately we are going to have to wait for other lakes before we can really show that the same events are occurring in all lakes. That is one way to show it, or you can manipulate lakes in some cases, but some fish might even increase in numbers, such as this sheepshead, for example.

It is an MNR slide. There are several species of fish feeding on zebra mussels. The perch is one, although not a major way. The sheepshead is one of the major predators of zebra mussels.

Waterfowl may increase in numbers because of the presence of zebra mussels. We need data to show that some of the increases we are seeing in some of the waterfowl populations are in fact due to the increase in zebra mussel populations. There may be a negative side to this. Zebra molluscs are good intermediate hosts for parasites. Maybe the zebra mussels are carrying parasites and we will see an increase in parasitism in the waterfowl, for that matter in the fish as well. Those are other studies that have to be done.

In Europe, the crayfish preys on zebra mussels. In North America, they have not discovered how yet; the zebra mussels seem to be beating them to it. But in Europe at least they often use crayfish to control zebra mussels on nets.

So fish may benefit. We may be able to use them even for controlling zebra mussels, although I doubt it as far as the Great Lakes are concerned. There are several chemicals that can be used. Chlorine seems to be the most popular one at present, and you have to consider the effects of temperature—12 degrees versus 22 degrees—and there are different times of the year when you have to control the mussels, so some times in the year you need more chlorine than at other times. It depends on how you do it. You can do it continuously at low levels or intermittently at higher levels. We have done experiments to show that roughly 2.5 to three parts per million is needed for 100% kill of zebra mussels.

There are some molluscicides that are seeking approval right now. These have to be studied in terms of their effect on the ecosystem. We know that they kill zebra mussels but we do not know what their effects on non-target organisms are. Hydrogen peroxide is another one that is being considered. As far as different materials are concerned, we have looked at something like 18 different kinds of products to date, and this includes waxes, coatings, different kinds of paints, paints with copper, paints without copper. So far, as you can see by the lack of bars here, paints with copper are the most effective at keeping zebra mussels off. That is copper plate in there and those are waxes at this end, which do not prevent mussels from attaching but are very good at preventing firm attachments.

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We have looked at growth rates on the different materials and still copper comes out best. Any material with copper in it is good from that point of view. They reduce attachment and growth rate. Even in the ability to attach, how firmly do they attach, copper comes out on top again. Waxes are good in the sense that you still get a lot of mussels attaching but they come off very easily. Anywhere

from 80% to 90% of the mussels come off on waxes with a very gentle rinse.

Heat is a potential method for controlling zebra mussels. This graph shows that acclimation temperature is extremely important. If mussels are acclimated at 25 degrees, you need more heat to kill them. If it is at 2.5 degrees, you need less heat. These are laboratory experiments. What it is going to be like in nature, we do not know yet. These experiments have to be performed in the industries yet.

Filters: You can use filtration but the filters have to have a core size sufficiently small enough to remove the settling sizes of zebra mussels. That means 200-micron openings or smaller. At that size of opening, most filters will not supply the huge demands of water demanded by many industries, often exceeding 500,000 cubic gallons per minute.

This is an experiment we did with activated sewage sludge just to show you how good the zebra mussels are at filtering the water. You can see in the top there are two buckets on the left that have zebra mussels in cylinders and on the right there is none. You hardly see the air stones in that right bucket and you can clearly see them in the left. They are very efficient at taking out phosphorus. In this 3% sludge, you can see that the control levels were 40 to 50 milligrams per litre and in the test chambers they reduced to less than five zebra mussels.

Biochemical oxygen demand: very efficient at removing a lot of that organic material, hence lowering the biochemical oxygen demand and just generally taking material out of the water, putting it on the bottom. We refer to them as biodepositors.

That is my presentation for today. Thank you.

Mr Ruprecht: Dr Mackie, I would be interested to know what you would describe as the best agent at present in order to control the zebra mussels.

Dr Mackie: The best agent? Try something non-chemical, because chemicals tend not to be specie-specific. In other words, chlorine does not attack just zebra mussels; it attacks all sorts of aquatic life. Potassium has been recently reported as an effective chemical, potassium chlorate, and in fact potassium is not specie-specific. The researchers at Ohio State University, for example, found that roughly 70 milligrams is needed to kill zebra mussels; only four will kill our native clams, so potassium is not the secret chemical either.

In regard to molluscicides, algicides and whatever, we still do not know the full impact on the ecosystem and, even though they have been demonstrated to have little impact on non-targets, there are too many non-targets out there to study yet. So it really is an ecosystem approach that we have to take.

Mr Ruprecht: Are we presently using chlorine?

Dr Mackie: Chlorine is the most common chemical used right now because it is inexpensive. Most industries currently have chlorine in place, and it is just a matter of retrofitting.

Now to the intake structure: You have to go to the intake to control these. You cannot do it in the product so it has to be right out at the intake structures.

Mr Ruprecht: You were telling us that we have, I was not quite sure what the numbers were, but I thought it was 34 indigenous or local species of clams, and consequently they are being attacked by the zebra mussels. Could you confirm that chlorine is being used extensively? Is chlorine an agent that will kill the indigenous species as well?

Dr Mackie: We have no data on that. One of the problems we are currently facing as far as chlorine is concerned is that the Ontario Ministry of the Environment standard level allowed into the surface in the effluent water is 0.002 or 0.001 milligrams per litre. The most sensitive instrument that you can purchase to measure the lowest levels of chlorine possible is 0.01, or an order of magnitude higher than what that standard recommends. What the effect of that order of magnitude is going to have on the ecosystem over 10 years is really an unknown.

Mr Ruprecht: Have the Europeans rejected that?

Dr Mackie: No. Their systems are really a lot different and we cannot emulate them. We are not able to emulate it in most instances, number one, because the Great Lakes are so huge; number two, they tend to build short, wide intakes, so it is more of a mechanical control that they use. With short, wide intakes it takes several years for the mussels to collect and reduce the flow into the facility, whereas here we have narrow intakes. They are 9 or 10 kilometres out in the middle of the lake.

Mr Ruprecht: What area would you recommend to this committee to do future research in?

Dr Mackie: I would suggest looking at some of the physical approaches right now, and there are several of them. There is heat, although there are several industries that are now at the delta T limit. They are not allowed to have a change in temperature of more than 10 degrees, that is from the temperature coming in to the temperature leaving. Many are at that limit right now, so they have to be very careful how much more heat they add to the system or perhaps modify the system so it cools the water that they heat up. But that is one potential.

Not all industries have that capability, incidentally, so they are going to have to take a different approach, maybe filtration, if somebody can come up with a method of backwashing fast enough. Some industries will not be able to use it because the demands are just so enormous—500,000 gallons per minute, for example, at the Nanticoke station. I doubt if there is a filter that will supply that demand, but they will supply 2,000 or 3,000 I am sure, with some experimentation.

There are infiltration galleries being studied right now. Maybe that will be a solution. Flushing rates, none of the industries have the ability to increase the flushing rate, but if you can keep the flow running at 1.5 metres or more per second, that will prevent the mussels from settling.

Mr Ruprecht: What are infiltration galleries?

Dr Mackie: The Tilbury water treatment plant has an experiment in progress—maybe the MOE people can give you the exact details—but as I understand it they are using the bottom of the lake to filter the larvae out so that water goes through the bottom of the lake, is collected into a pipe, chlorinated and then distributed to the consumer.

Mr Waters: What I wanted to ask about was natural predators to the zebra mussels. Do we have any?

Dr Mackie: We have all sorts of them, but I do not believe they are going to be effective enough at reducing the populations to levels that we would call not a problem. In Europe, at least in the Netherlands, waterfowl have been reported to reduce populations by 97%. However, in those instances, the lakes did not freeze and the waterfowl did not migrate. Our lakes freeze and the waterfowl migrate although there are reports of the migratory patterns of our waterfowl being altered, possibly, by the zebra mussels because of the zebra mussels.

Mr Waters: Okay. I have heard that there is waterfowl, and the other one I think is the yellow perch.

Dr Mackie: That is right.

Mr Waters: I have a concern how that is going to affect the food chain, because in the Lake Erie situation they are not only cleaning it up, in that cleanup they are taking chemicals out of the lake. With the predator situation in the lakes, how is that going to affect it?

Dr Mackie: It is going to take several years to determine the impact on the fisheries because of this lack of control I was talking about. We see normal fluctuations in fish populations every year. As I understand it, the walleye were decreasing for about 5 to 10 years before the zebra mussels arrived. So, it is those kinds of declines that you have to account for. Now that the zebra mussels are here, it is very easy to say that decline is due to the zebra mussels, but it may not be.

So we need our control lakes. We need one lake that is over here and another one that is over here; one has zebra mussels, the other does not, so you have this lake to study the normal changes and you have this lake to study the effects of the zebra mussels. That is sort of our classical scientific experiment, and then you have your replicates on top of that.

We do not have that opportunity yet. All we can go on is historical data: What were the magnitudes of the changes over the last 20 years? Are the magnitudes we are seeing now greater than what we have seen over time? If they are, therefore it might be due to zebra mussels.

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Mr Waters: Another thing in your discussion that just sort of came to mind: you mentioned that they have a two-to four-week settling period. Once they have settled, and prior to that two to four weeks, do we have any concern about them? In other words, the concern time is the two to four weeks when they attach themselves?

Dr Mackie: As far as the industries are concerned, that is what they are interested in: Is the attachment on? As far as the ecosystem is concerned, as well, we are more interested in the settling stages and the effects of the adults on the water column, but also the larvae. Are those larvae going to alter the food chains or are they feeding on some of the rotifers or the smaller animals and the algae that is out there that was once available to the other animals? Are they going to alter that process? So those are the kinds of experiments that we have to do yet.

Mr Waters: I have one last question I wanted to ask because I come from the granite-stricken area of the province. When you get up there you probably do not have the calcium you have down here. Is that going to give us any relief once you hit the granite area?

Dr Mackie: It may be irony that some of our lakes that are currently acidifying may be free from zebra mussel infestations, but that is about the extent of it. We are not sure what level of calcium is needed for these zebra mussels to survive. The literature only reports lab experiments, and you cannot always extrapolate from the lab to the field. I mean, maybe calcium levels—first of all, you need a firm substrate. I do not care how good the water is. You may have ideal temperatures, ideal calcium, ideal this and that food; if there is no hard substrate in that lake, they are not going to do well there. They need hard substrate to survive.

For a lot of our lakes we do not have that kind of formation, as I understand it at least. We do not have maps of the amount of firm substrate in the bottoms of these lakes. Some lakes have easy road access. Boats are coming in there every day from the Great Lakes. They are probably more susceptible to zebra mussels than lakes that you fly into and so on. Even though pontoons of airplanes can carry veligers into those lakes, they are far less susceptible to frequent zebra mussel introductions than the lakes that are accessible by road.

Mr Ramsay: I would like to return to the European history of the zebra mussel. You have mentioned in your discussion that the Europeans now are making changes to their infrastructure rather than using chemical combatants to stop this invader. I was wondering if you could give me a quick overview of what processes, chemical or otherwise, they may have considered and rejected and why.

Dr Mackie: One of the methods they have used is winning a system. They have two systems. They run one and as it becomes infested with zebra mussels they will shut it down, open up the other one and clean out the first one. So they just keep switching back and forth. It is called winning. That is an extremely expensive thing to do. Zebra mussel infestations, in many parts of Europe, happened with the industrial revolution. As these plants were being developed, they were incorporating this twinning process as they built the industries. I do not know how many industries that were once just single, you know, once through, have twinned their systems. It is an extremely expensive process.

Mr Ramsay: But certainly they must have considered other alternatives rather than just building additional infrastructure?

Dr Mackie: Yes. They have tried electroshocking, which has potential and ultrasound, which they did not find very successful, but there are experimenters here in North America who claim they have the right frequency of sound waves to prevent mussels from settling. I am not sure that would kill them, but certainly prevent them from settling. There may be combinations of things that we can use.

We can use the European experience to start with, but rarely have we been able to emulate it exactly for some reason or other, even the chlorine levels; they used 0.5 milligrams per litre to kill zebra mussels. It will not kill the larvae here; the larvae dance at 0.5 milligrams per litre. We need two to three milligrams per litre to kill them.

Mr Ramsay: So they have considered chlorine but have set limits to it.

Dr Mackie: That is the most popular method of control in Europe right now: pour in chlorine.

Mr Ramsay: You are saying the limits they have set are ineffective?

Dr Mackie: I am not sure what their standards are, frankly, or what levels they have. Frankly, I do not know the answer to that.

The Chair: Okay, thank you very much, Dr Mackie. I appreciate your taking the time to be with us this morning and provide a very informative presentation.

JON STANLEY

The Chair: Our next witness this morning is Dr Jon Stanley, who is a fishery biologist with the US Fish and Wildlife Service in Ann Arbor, Michigan. Dr Stanley will discuss the US federal research and management efforts, with particular emphasis on American and international regulatory and policy initiatives intended to deal with invasive species once they have become established in North American environments.

Dr Stanley: My name is Jon Stanley. I am the director of the National Fisheries Research Center in Ann Arbor, Michigan, in the US Fish and Wildlife Service. My agency has a long history of working with exotic species. My laboratory developed the control chemical for sea lampreys in the 1960s and my agency is working on control measures for zebra mussels. I would also like to talk a little bit about purple loosestrife, which was one of the subjects that was given to us, and then I would like to get into zebra mussels. I have two handouts for you; one on purple loosestrife and one on zebra mussels.

As Dr Leach said, purple loosestrife came into North America via solid ballast water, became established and was recognized as a pest in the St Lawrence wetland area in Quebec in the 1930s, and it spread from there throughout the North American continent. Populations are still high in Quebec. Canada might be able to get rid of a good portion of the purple loosestrife population by allowing Quebec to secede from Canada.

Purple loosestrife occurs in wetland areas. It is opportunistic and it takes over areas where there are disturbances. Where there are roadways made or the wetland is disturbed in any way, purple loosestrife seeds will generate in this bare earth and will sprout. They can grow in flood conditions up to half a metre of water; they tolerate 50% shade. They grow very well in poor nutrient conditions, so they can outcompete most of our native species. They are a problem because they crowd out the native species and form a dense jungle of herbaceous material that wildlife cannot penetrate.

Many control methods have been tried, most of them unsuccessfully. Burning is ineffective. It actually creates bare earth, which encourages purple loosestrife over the native species. Flooding is ineffective and may actually enhance fresh spreading of purple loosestrife. Believe it or not, one of the best ways of controlling them is by pulling them by hand, a very labour-intensive method, probably not recommended. But in areas where there are disturbances and it is possible to get a labour force big enough in there, you could stop them at the early stages until our native vegetation can become established.

Once they become dense, then we almost have to resort to chemical control. In the US, the chemical glyphosate, called Rodeo, is registered for use on purple loosestrife. In the early stages of infestation, hand-spraying is possible, so you can spot-spray the individual plants to avoid killing native flora. If the stands become dense and monocultures, then one may have to resort to spraying from aircraft. One would probably have to repeat the spraying, and as the population became less dense, one might have to go in with hand sprayers then to finish off the job.

Our best chance, however, of controlling purple loosestrife is biological control agents. There is a weevil and there are two beetles that keep populations in check in their native ranges in Europe and work being done by the US Department of Agriculture is seeking to bring these pests over here—these are not pests, these are pest control agents—so that we can control purple loosestrife. This is not off the shelf yet. We need to do a lot more research, and this endeavour is something I am sure the United States would welcome Canadian participation in.

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Now I would like to turn to zebra mussels. We have had a lot of interest in exotic species lately and this was generated by the invasion of zebra mussels. On the US side, we have recently passed the Non-indigenous Nuisance Species Act for the management of all exotic species in the United States. At this point, no specific money has been appropriated except for the control of zebra mussels. My agency got an add-on this year of \$1.6 million specifically to study zebra mussels, and that would be under the non-indigenous species act. So we have a non-indigenous species act to cover all species, but funding at this stage is only for zebra mussels.

Several organizations in my agency are involved with this. One is our fisheries assistance office program in the United States. These are small offices located in various geographical areas. We are proposing that these people will collect early information on the spread of zebra mussels, because we do predict that they will spread throughout the United States. One of their main functions is to warn industries in the path of the zebra mussel to get out their chequebooks to pay for control as the zebra mussel shows up in any particular area.

My lab specifically is in the business of information co-ordination. We hope to be a data collection point and especially for co-operation with the Canadians in terms of research, results and dispensing information.

We have a laboratory in Gainesville which was set up specifically for the purpose of monitoring non-indigenous

species, exotic species. They have a geographical information database set up. This is a computerized database that has environmental information, and they intend to input information on exotics and their environmental requirements, to try to match requirements with exotics to predict the spread and intensity of infestations in various places in the United States.

For example, will zebra mussels become pests in the river systems in North America? We do not know that yet. All we know is that they are pests in the Great Lakes and the big open waters. We do not know how much of a pest they are going to be in rivers. In Europe they are a bother in rivers, but nothing like the population that we see in the Great Lakes. What are those environmental factors that may limit zebra mussels in other areas?

We have a laboratory at La Crosse which is set up to register chemicals for environmental use. This laboratory will seek out methods for controlling zebra mussels with either toxic chemicals that are safe to use or relatively safe to use, or other measures that can control zebra mussels in industrial sites or even in environmental situations.

We are not giving up the possibility that we will be able to develop a toxic that will be safe to use in open environmental situations. We do not know if we can do it. It is a tall order, but that is our goal, that we can develop safe chemicals for use in pipes and industrial situation and that can also be used in the environment. We will of course have to work closely with the Environmental Protection Agency, because that is the agency that is responsible for registering chemicals.

My laboratory is specifically working with interrelationships of zebra mussels with the fish populations; for instance, in the fish feeding on zebra mussels, the effects of zebra mussels on fish spawning. We too have some work on the effects on the native clam populations and then also on the environmental requirements of zebra mussels that we will do in co-operation with the Gainesville laboratory. We hope these activities will allow the fish and wildlife service to evaluate the effects of zebra mussels on fish, fish resources and the planned strategies to minimize the impacts where they are likely to occur.

Then a final organization the fish and wildlife service is working with on zebra mussels is the Northern Prairie Wildlife Research Center, headquartered in Jamestown, North Dakota. They presently have a field station in La Crosse, Wisconsin, on the Mississippi River. They have documented a pronounced decline in the diving duck populations that utilize the Mississippi flyway. They were not sure where they were going. Now we think we know where they are going. There has been a large shift in diving duck migration out of the Mississippi River system that has diverted eastward to the Great Lakes. We do not know what this is going to do to the duck populations themselves. They are being diverted, the food resources in the Mississippi have declined and they have greatly increased in the Great Lakes—namely, zebra mussels—and the ducks are coming over and they are staying in the colder area longer and then they are forced to migrate south over unfamiliar migratory pathways. We do not know what this is going to do to the ducks.

Of course the second and flip side of this study is, what are the ducks going to do to the zebra mussels? Are there enough of them to even put a dent in the populations? At the present time we think not, but we need this kind of data to build models and make predictions as to what fish and wildlife may do to zebra mussels and what zebra mussels will do to the fish and wildlife.

Thank you for letting me address your group. I will be happy to answer any questions.

Mr Ramsay: Dr Stanley, you mentioned a non-indigenous species act. Is that a state act or is that the federal one?

Dr Stanley: That is a federal act.

Mr Ramsay: That is the Aquatic Nuisance Prevention and Control Act.

Dr Stanley: Right.

Mr Ramsay: That is the one. You said there was not really a financial allocation given to that bill yet.

Dr Stanley: Other than the zebra mussel money, which was actually appropriated by Congress before the President signed the act. Congress appropriated the money, then Congress passed the act, and we are treating that appropriation as it rolls under the act.

Mr Ramsay: Could you just give me a brief overview of what the act says?

Dr Stanley: The act is funding for the sea grant program, the corps of engineers, the fish and wildlife service and other agencies. It is managed by a task force headed by the director of the fish and wildlife service and the deputy under secretary of commerce, and then with the head of the National Oceanic and Atmospheric Administration. They have formed a task force in which EPA and other federal agencies will be members. They will oversee research and control program of the various agencies to track aquatic nuisance species all across the United States. One species was listed that is not aquatic. The brown tree-snake in Guam is listed in this act. So it is broad-spectrum, national, and is not limited to zebra mussels.

Mr Ramsay: You said you felt the answer might be some sort of chemical combatant in the end. I am just wondering if we should be concentrating our research on a chemical combatant, when I think we are beginning to see, with the tremendous introduction of new chemicals over the years of this century in particular, especially in their application to agriculture and for other preventive uses that we have in society, a reaction against the introduction of new chemicals into the ecosystem. Do you think we should, to try to correct this problem, again be looking at a chemical combatant? Are we making an error in trying to just concentrate our research in that way or really thinking that is the answer, or should we be looking at other methods?

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Dr Stanley: I like to use the sea lamprey control as a model. It was an exotic. It was causing tremendous damage to the fisheries resources in the Great Lakes. We solved that problem by a combination of good research on

the basic biology of the animal, coupled with some chemical control testing. We found a weak link in its life cycle that required a very minute amount of chemical treatment. I think we need to understand thoroughly the biological life cycle of the zebra mussel and other exotics to try to get at the weak link in their life cycles. It is probably the larval stage. Some of the research that is already being conducted by Canadians and by the US is trying to understand the biology better. Then we can follow this up with some very specific, hopefully environmentally safe, registration of chemicals to zero in—pinpoint bombing, if you would.

Mr Ramsay: Surgical strike.

Dr Stanley: Right, a surgical strike.

Mr Ramsay: I think, though, that society today is demanding of us—legislators, scientists—more careful study of the effects of the introduction of new compounds into the environment also. This might take more time than maybe it did in the 1950s, when we were starting to look at the lamprey problem. It may slow down this process today if there is starting to be, as you know, some resistance to the introduction of new chemicals.

Dr Stanley: It has become very expensive. For example, we estimate that it will cost \$5 million US to register a molluscicide for zebra mussels. Our appropriation is \$500,000, so it will take us 10 years, if we are even successful. It is a very expensive process to get something that is environmentally safe. I agree with you that we should be very cautious about introducing chemicals into the environment.

Mr Ramsay: When you talk about developing a molluscicide to combat the zebra mussel, are you talking about sort of one application to wipe the species out or to try to just maintain the spread of the species? How do you envision the use of a chemical?

Dr Stanley: I think it is hopeless to wipe them out.

Mr Ramsay: So you would be looking at a maintenance regime of some sort.

Mr Waters: I have a couple of questions. Because it has been here for quite some time, can you give us some idea as to how long it would take for the purple loosestrife virtually to destroy an average wetland once it has been introduced?

Dr Stanley: It becomes very dense in three years. We heard testimony earlier about the number of larvae that zebra mussels put out. A healthy purple loosestrife plant puts out 100,000 seeds every year. One study, for example, showed that after 20 months, 92% of them were no longer viable, which meant that 8% were still viable. That is 8,000 seeds. The significance of 20 months of course is that this is the second growing season. So the seed bank can remain viable for two years or more. That is 8,000 seeds that would be ready to germinate from each plant. Once they become established, it is a tremendous problem to get rid of them.

Mr Waters: They would then fill up a swamp or a marsh area in virtually no time at all and make it solid land, destroy the whole ecosystem.

Dr Stanley: Yes. The real clue to prevent spread is to maintain a healthy population of native species. You keep them from getting a toe-hold. If there are a few in there, you kill them out as soon as you see them.

Mr Waters: You mentioned a weevil, I believe, and some beetles.

Dr Stanley: The United States Department of Agriculture is studying these three insect organisms as control agents.

Mr Waters: I take it they are looking at the effects on the rest of the life of the wetlands that these things might impact on.

Dr Stanley: Yes. The USDA has a rather rigorous quarantine procedure of working in greenhouses with these organisms. It is an expensive and laborious research program and takes several years to accomplish.

Mr Waters: Are there any other relevant pieces of legislation that you are looking at in the United States in regard to the current infestation of all of these things coming into North America from Europe?

Dr Stanley: The federal legislation I referred to is pretty comprehensive and includes ballast transport provisions. The one thing that is probably the weakest is the intentional introduction part of it. But from the earlier testimony you have heard, generally the intentional introductions are not the ones that are producing the problems.

Mr Ruprecht: I want to follow up on a supplementary to Mr Ramsay's question, but let me preface my remarks by saying that we appreciate your presentation, especially the humorous parts on Quebec and on pulling out your chequebook. We will leave the remarks about Quebec alone for this time. If we were to pull out our chequebook, Dr Stanley, where would you want us to do the research that would not be duplicated by either the army corps of engineers or Ann Arbor university, or other places where it is being presently done in the United States?

Dr Stanley: I am not sure a little bit of duplication is not desirable. I can give you a real good example. Three different groups were studying the effects of zebra mussels on walleye reproduction, a real simple question. They did the first year of experimentation and none of the three groups produced good, definitive results. So I think we do need to have some duplication of people working on the same objective to ensure that we get findings as soon as we can.

There is certainly room for work by the Canadians on whether the zebra mussels are going to spread into your inland lakes and rivers. It will be your responsibility to determine that. We are setting up our geographical information system; you should do the same. We all need to be working on the basic biology: What are the environmental requirements? How does this interrelate to the reproductive cycle? Some of these are site-specific, as you saw from the previous testimony. Is there one peak or two peaks of reproduction in particular locations? These are very important questions that industry needs to know the answer to, to map a defensive strategy.

We need \$5-million worth of research to register a chemical. Probably a lot of biological information is needed to back up that kind of research. We have \$500,000 devoted to that. We need help. There is ample place for a full partnership of the Canadians with the US, working together, co-ordinated. We have close co-ordination on the US side. We welcome the Canadians to join our co-ordination group of scientists and we hope that you can have an observer in our task force under the Aquatic Nuisance Prevention and Control Act.

Mr Ruprecht: Thank you very much. We will do that.

Mr Arnott: My question has more to do with governance than biology. I am wondering if the US has a comprehensive strategy, or an umbrella agency, or a strategy that takes hold when herbaceous species comes in so that prompt response from the government of the jurisdiction in question can be given.

Dr Stanley: The answer is that we have not had in the past, but under the aquatic nuisance act, yes, we will have. We will have a task force, we will have a structure of committee and subcommittees of scientists. I think we can address new problems very quickly. For example, we are already using some of the zebra mussel money to address exotics in general. A small portion of it is diverted to anticipating future exotics invading us as well.

Mr Arnott: I just feel it is absolutely critical, because there seems to be a consensus that zebra mussels are here to stay. My feeling is we have to learn how we respond to future problems such as this from this exercise.

The Chair: Thank you, Dr Stanley, for a very informative presentation and for making the trip to be with us today. The committee will now stand in recess until 2 pm.

The committee recessed at 1210.

AFTERNOON SITTING

The committee resumed at 1403 in room 228.

DAVID W. GARTON

The Chair: If we can come to order, I see a quorum and we can begin this afternoon's hearings. The witness this afternoon is David Garton, Department of Zoology, Ohio State University. Dr Garton will describe research being undertaken at Ohio State University, which hosted a recent symposium on the zebra mussel and other exotics.

Dr Garton: I would like to thank the committee for the invitation to provide testimony this afternoon. I am going to forego slides and just make a brief comment on some of my own personal opinions about the status of our knowledge of the invasion of zebra mussels into North America, and try and leave ample time for the committee to address questions regarding research being conducted at Ohio State University and my own personal opinions as to what should receive priority for research on zebra mussels.

As you have already heard today, the zebra mussel has spread rapidly throughout the Great Lakes in the past two years since its initial discovery in Lake St Clair. Although its rapid spread can be easily explained by its free-swimming larval stage, the population explosion that has resulted in mussel densities far above those reported in European studies has been an unpleasant surprise.

The introduction of the zebra mussel will pose significant ecological and economic problems for many years to come. Water intakes for power generating, water treatment and manufacturing facilities on Lake Erie, both in the United States and Canada, have already reported significant problems with fouling by zebra mussels.

Fisheries biologists are now also faced with the problem of estimating the production of commercially important species of fish using bioenergetic models that do not incorporate the impact of zebra mussels and will be trying to answer fundamental questions such as, will there be a long-term reduction in Lake Erie fisheries?

Only time will answer these and many other important questions regarding long-term impacts of the zebra mussel in North America. Unfortunately, there is simply no practical method for eradicating zebra mussels and restoring the Great Lakes community to its pre-zebra mussel status. However, we can guide our reaction to this invasion in several ways.

We should commit resources to limit the distribution and spread within North America, determine reasonable, that is, inexpensive and environmentally responsible methods for controlling local populations in intake systems, and implement research on long-term changes in aquatic communities invaded by zebra mussels. Just as important, the continuous introduction of non-native species must in some manner be curtailed.

In this statement to the committee, I would like to report current research on the biology of zebra mussels and offer my opinions regarding the zebra mussel issue. All opinions expressed below are my own and do not reflect the official positions or policies of federal or state agencies which have funded my research, including the National

Oceanic and Atmospheric Administration, the national sea grant program, the Ohio sea grant college program and Ohio State University. I would like to emphasize that these are my own opinions.

There is no doubt that the western region of Lake Erie is an excellent habitat for zebra mussels. In less than two years mussel densities in some areas exceed 100,000 per square metre. In the Bass Island region in western Lake Erie, where I conduct my research, densities routinely exceed 50,000 mussels per square metre. Densities in excess of 700,000 per square metre have been reported for intakes systems for Detroit Edison's coal-fired electric generating plant at Monroe, Michigan. Clearly such high densities are the result of ideal environmental conditions for the growth and reproduction of zebra mussels.

My initial research has focused on factors responsible for controlling the reproductive cycle and growth of zebra mussels at Stone Laboratory, which is a research facility operated by Ohio State University in the Bass Island region in western Lake Erie. Results of work begun in 1989 and continued through 1990 have shown considerable differences in reproductive patterns between the two years, possibly the result of annual variation in temperature, weather patterns, food availability and the density of mussels themselves. In fact, there is initial evidence that these high mussel densities are limiting further growth of populations in the western basin.

However, most of my results are preliminary and it is difficult to make firm conclusions or sound statements and predictions about future conditions. Rough calculations now indicate that population growth has probably peaked and that the carrying capacity of the system for zebra mussels has been reached or even surpassed, which would indicate a decline in population densities in the future.

One point that has become clear from my own research on zebra mussels and that has been reported by other researchers in North America, such as Gerry Mackie at the University of Guelph, is that zebra mussels are highly variable and adaptable. Data from many other European studies and my own conversation with European researchers have indicated the difficulty in predicting the behaviour of zebra mussels in different systems. In some lakes where environmental conditions are adequate for supporting large populations, small populations are found. Vice versa, in some lakes where environmental conditions are rather extreme, they find large populations of zebra mussels.

Although some critics may claim that we are simply repeating European studies, we must continue to study the basic biology of zebra mussels in North America in order to better understand the consequences for native organisms. We cannot afford to extrapolate from European studies to predict the impact of zebra mussels in North America.

Research on the basic biology of zebra mussels will also yield data important for control efforts. Reasonable control strategies should exploit weak links in the life cycle of the mussel. Disruptions of these critical stages may lead to successful control of local populations. As has

been mentioned earlier, the larval stage is one critical point in life for a zebra mussel and it is at this point in the life cycle when mussels are most sensitive to stress. Therefore, studies on factors which determine spawning of adults, duration of the planktonic stage and mortality of veligers, the free-swimming larvae, should be given high priority. In addition, studies on the stress physiology of adults may provide useful information on when adult mussels are most vulnerable to control measures.

Large populations of zebra mussels can have significant direct and indirect effects on invaded communities. In an ecological sense, understanding the flow of energy, or carbon, through populations of zebra mussels, as well as linkages between zebra mussels and pelagic communities, provides the information necessary for formulating new community models for fisheries biologists. As filter feeders, zebra mussels feed on microscopic algae in the water column, and as these algae represent the base of the food chain which supports important species of fish, consumption of this algal food base may have significant negative impacts on fish production. Zebra mussels can also attach directly to other native species of mussels with significant negative effects.

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Given the large population of zebra mussels already established in Lake Erie, plus the potential for spread to additional inland lake and river systems in the United States and Canada, I simply cannot overemphasize the need for continued support of basic research on the biology and ecology of zebra mussels.

Zebra mussels have already spread throughout the Great Lakes, with veliger larvae being transported passively by water currents from Lake St Clair into Lake Erie and Lake Ontario, and carried in the ballast tanks of lakerees into the upper lakes, Huron, Michigan and Superior. This intralake transport represents the same mode of transport from Europe to North America. Within the near future, zebra mussels will be transported from Lake Michigan via the canal connecting Lake Michigan to the Illinois River, which drains into the Mississippi. From the Mississippi River drainage system, they can spread throughout most of the eastern United States. Transport of mussels along commercial routes and lakes and rivers probably cannot be prevented. Even if ships and barges could somehow be decontaminated, bulk flow of water along navigable waterways would provide a route of invasion for free-swimming veligers.

The most likely avenue for the spread of zebra mussels into inland bodies of water is through human transport of the microscopic veliger stage via live wells in fishing boats, bait buckets, transport of hatchery-reared fish, or even as adults attached to the hulls of pleasure boats. Therefore, mussel dispersal along this pathway has the best potential for regulation. If the introduction of zebra mussels into inland lakes is to be prevented, then an immediate, aggressive public education campaign and inspection and monitoring systems must be established. However, one must question the likelihood of excluding zebra mussels from any particular body of water, as it

takes only one bucketful of water containing veligers to breach any defence system.

The introduction of non-native species into North America began with the first European colonists and has continued to the present day. Indeed, many familiar plant and animal species are the result of intentional and non-intentional introductions. Most introduced species are benign in that they do not have significant ecological or economic impacts. However, transoceanic dispersal of marine and freshwater species has recently caused catastrophic introductions.

We are all familiar with the zebra mussel and its impact in Lake Erie, but I would like to mention two other species which by coincidence also appeared in North America in the 1980s. Earlier, mention was made of the river ruffe which was introduced into the Great Lakes in Duluth harbour in western Lake Superior. In Europe, ruffe invasions often lead to declining harvests of commercially valuable species. Fortunately it is not spreading rapidly across Lake Superior. However, it is still cause for concern. A small clam, *potamocorbula*, appeared in San Francisco Bay in 1984 and since then populations of this Asian species have exploded. Decreasing abundance and biomass of native species as well as elimination of spring phytoplankton blooms have been correlated with increasing *potamocorbula* populations.

These examples serve as evidence of the continuing threat posed by invading species to native communities. Unfortunately we cannot predict which species are potentially beneficial, benign or catastrophic. An innocuous species in Europe or Asia may cause serious problems if transplanted to North America, and the reverse is also true. Therefore, it would be wise to try and prevent the introduction of all non-native species. In the case of the zebra mussel and its mode of introduction, this would require legislation controlling the treatment and discharge of ballast water from ships arriving from overseas ports.

This past fall the Congress of the United States enacted legislation appropriating funds to support zebra mussel research, and right now those funds will be averaging about \$8 million per year for five years. US Senate Bill S. 2244 is broad-ranging, covering issues on the regulation of ballast water, promulgation of environmentally sound control measures and assessing ecological impact on fisheries. Many government agencies are involved in this bill, including the US Fish and Wildlife Service, national sea grant program, NOAA's Great Lakes Environmental Research Laboratory, the Great Lakes Fishery Commission, the Environmental Protection Agency and the US Coast Guard.

In addition, this legislation established the Great Lakes Aquatic Nuisance Commission, charged with overseeing, co-ordinating and submitting annual reports on control, research and education programs on nuisance species. Jon Stanley mentioned earlier how broad-ranging this bill is. There was one section in the bill concerning the brown tree snake, which eats the eggs of birds that nest on the ground and is a serious pest on Guam and other islands in the western Pacific.

As this legislation was only recently passed, many research projects have not yet begun. Most research projects on zebra mussels begun in 1989 through 1990 were initiated by state sea grant programs in Ohio, Wisconsin, Michigan and New York, and by necessity were quite limited by available funds. However, several pilot programs in monitoring, public education and a clearing house for zebra mussel information were successfully established. The Great Lakes region sea grant programs have also been aggressive in organizing conferences and symposia as additional avenues for disseminating information on the current status of the zebra mussel in North America.

In spite of these early efforts, it is clear that much additional research needs to be performed. I can only counsel patience and recommend continued support of both basic and applied research. Scientific endeavours do not provide ready-made answers to all questions. A thorough understanding of the biology of zebra mussels is crucial and with time will provide the knowledge necessary for minimizing its ecological and economic impacts. Furthermore, I hope the American and Canadian experience with zebra mussels provide a powerful lesson on the penalties for allowing unregulated introduction of non-native species.

I will be happy to entertain any questions from the committee.

Mr Ramsay: Dr Garton, thank you very much for that presentation. It is for me eliciting four different areas that I would like to ask you about.

You stressed very heavily that we should not reduce our efforts in any way in the amount of research we are doing, and basic research in particular, into these invasive species. The question was asked earlier this morning about would there be any waste and duplication of work between the various jurisdictions, state, federal and between our jurisdiction here in Canada and what you are doing in your country. Do you see the need, with the limited funds that all governments have today, for maybe getting into some sort of co-ordination so that there could be some duplication, but that would be planned where people felt it was necessary?

Dr Garton: Under an ideal funding environment, you could fund all deserving projects for practical reasons; for example, in case one project fails where another might succeed in giving the necessary information in the shortest period of time. Jon Stanley alluded to one situation.

Second, the species is very adaptable, and what it might be doing in the western basin of Lake Erie as far as responding to environmental cues is concerned could be quite different from Lake St Clair, could be quite different from Lake Michigan, could be quite different from an inland lake or body in Ontario. So we need to do similar studies in many different types of environments to try and get some understanding of what factors regulate the biology, the reproduction, the growth of zebra mussels. So some duplication is necessary.

Also, if you are using techniques that might lead to equivocal results, if you get the same results multiple times, you have greater confidence in those results.

Realistically, with limited funds I do see a need for some central organization. Right now on the American side, with the list of federal agencies that I just provided to you, they are talking about commissions or committees of 15, 16 or 17 individuals, and that I think is getting to the point where it gets rather cumbersome. However, it should be that the ideal we strive for is co-ordination of efforts.

Mr Ramsay: Between our various countries too. Maybe the International Joint Commission could be one body to try to co-ordinate what you are doing in your country and what our provincial and federal authorities would be doing too.

Dr Garton: It is my understanding they are already working along those lines.

Mr Ramsay: You also mentioned, which I found interesting—I believe you were particularly alluding to the populations in the western basin of Lake Erie—that you felt the populations may be self-limiting at that particular place. You said it was very difficult, though, to predict exactly what is going to happen with the populations, but it could be that in some places they have even gone beyond and will die down. I am just wondering, is it going to be possible, do you think, that all other species and mankind may just be able to coexist with this invasion?

Dr Garton: There is no doubt we will have to coexist with zebra mussels. There is no way to eradicate them.

Mr Ramsay: I meant without any interference, let's say.

Dr Garton: Without any interference? Clearly in Europe that is the situation as it exists there. However, as to their densities, we are talking, in order of magnitude, of a greater number of biomass and numbers of zebra mussels in Lake Erie than have been reported in European systems. However, the common phenomenon in European lakes is a rapid population explosion followed by a crash. Right now we are simply waiting to see if there is going to be a crash in Lake Erie.

Lake Erie is considerably larger than virtually all of the European lakes so we are, in engineers' or statisticians' lingo, sort of extrapolating beyond the database, the range of experience in Europe and of Lake Erie being larger and quite a bit different from some of the European systems. If it follows the European pattern, we may end up seeing cycles. There will be good years and bad years for zebra mussels. Some years the population will explode; other years it will be quite low.

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During the conference we had last month, I had an opportunity to spend a good bit of time talking to Dr Anna Stanczykowska from Poland. In many lakes they see 7- to 12-year cycles, large population increase and just sort of a natural dampening or cycle once it becomes established. Whether we will see similar long-term patterns in Lake Erie or other systems in North America, we do not know.

Mr Ramsay: In dealing with trying to control the spread of the zebra mussel to other bodies of water, you stress the need for inspection, some sort of enforcement

mechanisms. What sort of inspection enforcement mechanisms may be in place in the United States right now?

Dr Garton: I know of no formal inspections that are up right now. There are some informal ones. There is a colleague of mine at the University of Tennessee who has been driving around to various lakes and just inspecting boats that are coming down now—actually it was earlier in the year, earlier in the season. A large number of people in the Lake Erie region in Ohio trailer their boats to lakes down in Tennessee and Kentucky and can make the drive well within a short enough period of time for zebra mussels to survive the trip. He has observed adults on the hulls of boats about to be placed into lakes in Tennessee and Kentucky. So we may be closing the barn door after the horse is already gone in some respects. It is hard to say. It may take one, two or three years before the population reaches a size where they can be detected. That is apparently what happened in Lake St Clair. They were discovered in 1988, probably introduced in 1985 or 1986.

Mr Ramsay: So it appears that it really it is going to be impossible to prevent the spread, but we might be able to inhibit somewhat the spread?

Dr Garton: Yes. That would be my recommendation. If you were to pick a lake and say, "We're not going to let zebra mussels come here," I would be dubious as to the success of that strategy, because there are simply too many lakes and bodies of water. However, you want to do all that you can to discourage and retard their progress. It may even be conceivable that for fairly small lakes, just like if we find an environmentally safe or reasonable means of treating an acidified lake with lime, you may end up being able to treat small enough bodies of water for zebra mussels, if the fishery in that lake is valuable enough and if we feel there will a negative impact by zebra mussels on a fishery.

Mr Ramsay: I think it was earlier this morning we saw some evidence, I believe it was presented by Dr Mackie, where he was showing comparative studies of different surfaces and the different degrees of adhesiveness that the mussels have on these surfaces. I am wondering if one way of trying to inhibit this spread, rather than trying to have some sort of forced inspections and, as you say, "We're going to try and save that lake, whatever", might be to encourage the use of some coatings, waxes, whatever, that just might slow the adheredness of these molluscs to the different surfaces. Would that be one way of at least trying to slow it down a little bit?

Dr Garton: If you are using high-pressure water to clean off the boat hull before introducing it to another lake, that might be one recommendation that could be made. That is outside my area of expertise so I really would not really know.

The Chair: Can I move to other questioners?

Mr Ramsay: Sure. I have one other question. I could maybe have a go later.

Mr Waters: Since there are a lot of people who want to ask, I have one question. If you have a boat or a bait

pail, how long will these molluscs survive once you put the boat out of the water?

Dr Garton: The larvae or the adults?

Mr Waters: I will take both answers.

Dr Garton: The adults, if under moist, damp, moderate conditions, can probably go many days outside of water, attached to a boat hull. Many mollusc bivalves can close their shells and avoid desiccation for many days, they are really tough in that respect. The larvae, if the dissolved oxygen or water temperature changes very rapidly, are very sensitive. It might be hours to a day or two under those types of conditions. The larvae are far more sensitive than the adults.

Mr Waters: I will turn it over and let somebody else ask.

Mr Charlton: One of the things that you emphasize in your presentation here today was the need, because of what we have experienced with this zebra mussel situation to control the introduction of non-native populations into our ecology. I suppose there are some approaches that, in terms of regulation around both your federal and our federal governments, around questions of shipping that we could look to in terms of both tough regulations and enforcement of those regulations around ballast water and so on.

In terms of a strategy, would it make sense, for example, to look on some kind of a recurring cycle basis at where the shipping is coming from and attempting to identify in advance potential problems and learning as much about those problems as you can before you get into the questions of whether you can screen them out or not?

Dr Garton: Well, turn it backwards and say, since we know zebra mussels came in and about when they came in which ship brought them in? You cannot. We do not know which ship brought them in. Since we cannot go back and determine how to identify the ship that brought them in, to formulate a model where we would predict, this is the ship or these are the ships we have to worry about, is going to have some amount of doubt to it. If you allow just one ship to slip through—sometimes with shipping records and ports of call you do not know if you can get that in real time enough to save—

Mr Charlton: You are right. In terms of identifying a specific ship that brought in a specific zebra mussel, you are not going to be able to do that. I guess what I was trying to get at, would it make sense or is there any mileage in, in terms of a general scientific approach, attempting to identify the potential dangers based on where the shipping was coming from?

Dr Garton: Danger zones overseas, I suppose.

Mr Charlton: In other words, you are not going to have ballast water bringing in great white sharks. It is going to be small—

Dr Garton: Precisely. It should be ships that are transiting from freshwater ports or ports that have large freshwater input, the Baltic, some of the coastal ports in Europe, and the Caspian, in that area. Recently the zebra mussel could have come from any port in Europe so it

rovides no information. The spiny water flea probably came from a northern European port. The two goby species that have recently been reported from Lake St Clair come from the Caspian, probably from a Turkish port. We're talking a large number of ports that potentially could ring in organisms.

Mr Charlton: In scientific terms, if we were more prepared for a potential when we discovered it in Lake St Clair or wherever else we discovered it, are you in a better position to deal with it if you have done some advance work?

Dr Garton: That is a good question, I really would not know.

Mr Charlton: We have to decide both how to deal with the current problem and how we deal with what you're saying is a very important future.

Dr Garton: I could not pick a problem and say this is the one you will prevent by adopting this strategy now. I could not say that. Part of the problem is that zebra mussel larvae were identified in plankton in ballast water years before they were successfully established in Lake St Clair. They have continually been introduced. Something happened in the Great Lakes community or some environmental condition was benign enough that it allowed the successful introduction to take hold. Organisms are continuously being brought over, but 99% of them are unsuccessful.

Mr Arnott: I want to commend you on your presentation. I am sure the committee will find it very, very helpful to us in our responsibilities here. I wonder if you can elaborate on the last sentence that you gave in the presentation, talking about, "This should be taken as a powerful lesson on the penalties for allowing unregulated introduction of non-native species." Would you like to expand upon that? Is there something that you could suggest that we should set up so we can be more responsive to invasive species when they do appear?

Dr Garton: In this case it is trying to recognize all possible avenues. For agricultural pests, animals, plants, insects, those are all very close and tightly regulated. Ballast water missed the attention of everyone because it was so invisible and probably most of the organisms that were being brought in at the time had no significant effect or impact. In the last decade we have seen many examples where the reverse is quite true. There are species out there which can cause harmful effects. I mentioned *Potamocorbula* in San Francisco Bay in the 1980s, and zebra mussels also in the 1980s. I put that comment in there specifically to address ballast water.

There is a whole other philosophy. You can talk about manipulating ecosystems. We do that all the time in the Great Lakes. But at least for intentional introduction some forethought has gone into what will be the result of this. It is sort of moving from a reactionary phase to a proactionary phase. I would not argue that we could be 100% successful in preventing any future introductions, but at least reduce the swell. In my years of working in biology in the field, I have never seen an organism move into an environment and dominate it so quickly, so rapidly.

Mr Klopp: There has been a lot of talk that we should study potential new problems. Can I take it from you that you have said very clearly, "Just assume that there's a problem out there. Don't waste the money and the time to guess what's coming next. Pass regulations that virtually—you can get as tough as you want"?

If we are going to have free trade, fair trade and all that stuff, one of the costs we are going to have to put in there to everyone is that you be environmentally safe—almost you wash the boat right down or the plane right down, or whatever, and just assume that there is going to be something there, as you pointed out. Is that what you are basically saying to us and your government?

Dr Garton: Yes. We already accept that in agricultural products. Look at the state of California, the state of Florida response to medflies. It was automatic and traumatic. They were protecting a billion-dollar industry. The Great Lakes and other inland bodies here are also billion-dollar industries. It simply makes sense to try to protect them.

Mr Klopp: We have the same thing in the breeding of cattle, like black tongue and stuff. We have a very stringent rule. Unfortunately your government actually wants to make it its rule, but that is another issue. I want to make that clear to everyone, to me it is very important.

Dr Garton: I am not specifying any particular organism because right now we could not predict.

Mr Klopp: Who knows.

Dr Garton: We certainly would not want to introduce snails that might carry some kind of parasitic disease. They probably would not survive here anyway because those are tropical species, but anything can happen.

Mr Ramsay: Could I have a supplementary on that?

The Chair: One minute.

Mr Ramsay: In your section of the paper where you talk in general about the introduction of non-native species in North America, you start off talking about the history of European settlers bringing in non-native species. Then you talk about the invasions we have had the last couple of years. You finish off saying that you really cannot predict how serious a problem these introductions can cause, and you finish off that sentence, "Therefore, it would be wise to try and prevent the introduction of all"—and you have that capitalized—"non-native species." Would you take this point so far as to mean that we should be very careful in our intentional introduction of non-native species, as we do, say, for sport fishery?

Dr Garton: This is my opinion. There is a lot of argument about what sort of fish community, aquatic community, we should be trying to manage in the Great Lakes; as to whether we should be trying to go back and re-establish the community that existed back in the 1800s or if we should just be trying sort of a recreational-commercial fishery that can be maintained.

We have species like rainbow trout and salmon of various species being stocked intentionally in the Great Lakes to provide a fishery. Those were intentional introductions, some better studied than others. Some will argue that that was good or bad, and I am not going to argue that right

now. Certainly before any species is introduced into the environment, all possible long-term effects should be thoroughly studied.

Mr Ramsay: Thank you, Mr Chairman, I appreciate that.

The Chair: Thank you, Dr Garton, for a very informative presentation. Thank you very much for taking time to appear before us today.

MINISTRY OF THE ENVIRONMENT

The Chair: The next group of witnesses will be a panel from the Ministry of the Environment. The panel will brief the committee on existing and proposed research, environmental management and policy initiatives relating to the invasion of exotic species. I will have to let you gentlemen introduce yourselves.

Mr Fleischer: My name is Fred Fleischer. I am manager of the Great Lakes program for the Ministry of the Environment. My colleague is Jim Janse, the assistant director of the London region of the Ministry of the Environment. We have both been involved in the zebra mussel issue over the last year or so, working closely with the Ministry of Natural Resources.

Before Mr Janse gives us a summary of the activities related to the Ministry of the Environment's programs in zebra mussel control and management, I would like to just briefly identify to the committee the responsibilities of the Ministry of the Environment as they pertain to the federal government and the Ministry of Natural Resources, with our first overhead, please.

When we talk about water management issues in Ontario, it is understood by the scientific and policy communities that the federal government is the agency or the group largely responsible for the management of offshore waters in the Great Lakes. The provincial agencies, specifically the Ministry of the Environment and the Ministry of Natural Resources, are responsible for water management in the near-shore areas.

When we try to distinguish those activities, the province is responsible for management of the inputs that come from the land area, specifically direct inputs from municipalities and industries and indirect inputs from agricultural areas such as runoff from storm events and river discharges. The province also then develops control measures to manage those sources coming from the shore areas. So we have the federal responsibility pertaining to the offshore areas, international waterways and shipping. The province looks after the near-shore areas.

When we look at the introductions of foreign species to water bodies such as the Great Lakes, the Ministry of the Environment's responsibilities pertain to the study of those introductions as they impact on water quality. We could extrapolate that and say the study of the impacts of any sources, being contaminants or not, on water resources.

We look at bioaccumulation of those contaminants in the food chain. We study the impact of those introductions on intakes, and Jim will speak to us more extensively on that. We manage the approval of control technologies for protecting the intakes. We provide advice to municipalities and industries on the control of those technologies.

Over and above that, we also feel that we are responsible for conducting research into the management of resources, specifically those items I have mentioned. When we talk about the introduction of foreign species, the research pertains to, again, impact, bioaccumulation and development of control technologies for municipalities and industries.

I must also stress that there is close co-operation between the federal and provincial agencies in the management of Great Lakes resources. The zebra mussels issue certainly has been discussed with our federal colleagues and there are movements under way to co-ordinate activities related to those. The co-ordination is conducted under the International Joint Commission, as well as the Canada-Ontario agreement pertaining to Great Lakes water quality. The only other issue I wish to mention at this time is that from a provincial point of view, the management of the initiative related to zebra mussels has been assigned to the Ministry of Natural Resources, so MNR is playing the lead role on behalf of the province. The Ministry of the Environment is supportive of that role and co-operates with Natural Resources in the development of those policies.

Mr Janse: I would like to indicate to you very briefly some of the activities the Ministry of the Environment has been involved in. Our main interest that we have been expending all of our energies on is relating to the impact of the zebra mussel infestation on the water plants and industrial plants. Just to give you an indication of the areas of concern, as highlighted on this overhead, we are experiencing considerable plugging of the intakes where the mussels are actually building up inside our intakes and therefore reducing capacity to provide water to municipalities. There are also concerns with respect to internal plumbing within. Mainly, that is on the industrial side. The pipes of the heating systems fill up and create considerable problems. There are also corrosion problems as a result of the mussel infestation.

1440

Another concern and impact is the actual disposal of the zebra mussels. When they clean them, physically remove them, they have a waste product which then has to be disposed of in a satisfactory manner. The cost of control mechanisms to control zebra mussels as it relates mainly to the municipal side of things has an impact on the province of Ontario.

I think Fred already mentioned water quality and the bio-accumulation of contaminants. I will probably skip over that and go into a bit on the background of our involvement with respect to this.

As I identified here earlier, they were first detected in about 1988. The Ministry of the Environment in 1989 undertook essentially three main aspects. First, we monitored the spread and the impact on intakes. The purpose of that was to identify where they are, which intakes they are going to impact next and what action should be taken to control the adverse impact on the capacity of the intakes.

Second, we undertook a research study. Professor Mackie did that work for us—I think there may have been some discussion relating to that here—essentially to find

what they did in Europe, what mechanisms of control have been used and what the success of those particular controls were; that relates to biological control, chemical control, physical control and actual mechanical means of moving intakes.

Third, we were assessing the impact of it and control mechanisms on our existing intakes in the Lake Erie basin.

I just put up a slide. We have a report we can leave with the committee that highlights the results of the European experience and the details as they relate to the various control mechanisms.

Following up on that, with respect to controls, one of the things we found out in early 1990 was that in order for us to use a chemical control for zebra mussel protection in the intakes, we were required to get approval through the federal government under the Pest Control Products Act. Based on the information we got from the European experience of the nature of the problem we were facing and the urgency of the problem, we proceeded with the application and received approval in June from the federal government to use chlorine as an interim method of controlling zebra mussels. The control is really to prevent them from growing in the intakes, to kill the larvae of the zebra mussel as they go into the intakes.

What we did and are doing is moving the point of chlorination at water plants from the treatment plant itself to the mouth of the intake and therefore chlorinating through the intake as we go down. We reduce, then, the amount of chlorine we need through the treatment process of the water plant and then just bump it up at the end of the plant before it has gone into the distribution system. Essentially, it is relocating the chlorine from where we had it in the treatment plant, which was usually at the plant itself, and moving it to the mouth of the intake.

Again, we continue to monitor the spreading so we can predict where they are going to impact the intakes next so that action can be taken to correct it. We participated on an interministerial committee for provincial initiatives which MNR, I am sure, can enlighten you on. As Fred mentioned, MNR is the lead agency, and we were involved with them in various discussions relating to this.

We provide advice to municipalities and industries. We also hire consultants to obtain approval for the installation of controls at some of the MOE facilities that were being adversely impacted. Also, we approve applications that are submitted from industries and municipalities. Under our legislation, they cannot add anything to the water without an approval from the Ministry of the Environment.

We developed a set of guidelines, a guideline book, which would give direction to municipalities and industries on the approval requirements, what our conditions will be for the use of chlorine control for zebra mussels. That is just the outline of the cover of the guidelines.

Just to give you an indication of the problem we are currently facing, we have a number of intakes that are currently experiencing from 45% to 50% reduction in the capacity of the intakes; this is in the Lake Erie basin. The mussels just start growing on top of each other and just keep expanding and slowly fill in the intakes, and we have some intakes with a 40% to 50% reduction. Intakes that

are now being impacted are all the intakes in Lake Erie and parts of Lake Ontario. It is our understanding that the mussels now extend beyond the city of Toronto. Parts of Lake Huron and some in the St Lawrence River are currently being affected.

The next overhead is to give you some idea of what we are talking about when we are talking about intakes. There are approximately 86 large water supply intakes in those basins, as identified on the overhead. I also identified for you the number of industrial intakes that will also be affected, and the source of this information is identified in the overhead.

In total, in the Great Lakes basin—plus we anticipate that over time the mussels may get into the Lake Simcoe and Trent canal systems—we are looking at approximately 110 municipal intakes that are going to be affected.

I would like to very briefly identify why chlorine was selected as an interim approach. This problem came upon us rather quickly, as the previous presenter also identified. We looked at the research done in Europe, and it was determined that chlorine in fact is an effective way of dealing with it. It is readily available. We are presently using chlorine at the water treatment plant. It is a compound we add to drinking water now for bacterial control, so we are not adding a different compound; our staff is experienced with the handling and use of the compound. It has shown to be effective and will prevent the buildup on intakes. Also, it can be installed over a very short period of time. There is not a massive reconstruction of the intakes to be done.

I know there has been in the past a lot of concern about the use of chlorine. I have identified some of the controls we have incorporated in our approval for the use of chlorine for zebra mussel control. One is that they can only apply during the breeding season, because we are not going after the adult, we are going after the veligers or larvae of the zebra mussel. Those are the ones we want to kill off. The period is generally between June and October. My understanding is that when the water temperature is around 12 degrees centigrade they start to reproduce, and that is the period in which they would undertake the chlorination.

As identified earlier, the point of chlorination would be at the mouth of the intake. This was so we would not get chlorine feeding back into the lake, and also to protect our intakes. The chlorinator feed pump only operates when the water pump is operating and sucking the water into the intake, so it has no way of going back into the lake and therefore affecting the aquatic environment.

The chlorine residual levels we need to control the zebra mussels are between 0.5 and one part per million, which is the same level we use for the control of bacteria, so we are not adding a higher concentration.

When you add chlorine to water it produces compounds called trihalomethanes, and there has been concern about whether there will be an increase in the production of trihalomethanes in the Great Lakes as a result of moving the point of chlorination. We have been looking at that. I have some data that have indicated that the level of trihalomethanes in our drinking water in the Lake Erie area has gone down slightly over the last three years. We attribute

that to the clarity of the water increasing, that perhaps there is less organic matter in the water. Trihalomethanes are produced when chlorine reacts with organic matter in water; it produces a compound. Our levels in the drinking water in the Erie basin run between 20 and 60 parts per billion, and our criteria is 350 parts per billion, to give you a perspective.

Industry requires control over zebra mussels for its water systems. In the case of drinking water, the water goes into the municipal distribution system in a normal fashion and then the water is used in and goes through a sewage treatment plant. In industry we do not have that, so with any discharge directly back to the aquatic environment we put constraints on the level of chlorination to protect the aquatic environment in the lake.

That is essentially the background. We are open for questions.

1450

Mr Ruprecht: Would you say that the pressure you are under to begin treatment with chlorine is going to increase in the very near future?

Mr Janse: I do not see that the pressure to use chlorine is going to increase in the near future. The number of locations will definitely increase, as I indicated to you. As the zebra mussel spreads across the Great Lakes, we have to protect the intakes in that area, so on an interim basis there are definitely going to be more requests for the drinking waters to move to a point of lower chlorination and for industry to chlorinate.

Mr Ruprecht: We are in a bit of a quandary right now, to use chlorine, on the one hand; on the other hand, I am not sure we have enough research to determine what the effects of that treatment will be on other aquatic life or even what the effects will be on animal life. The reason I said we are in a bit of a quandary is that the pressures, as you said, may not increase, but they are certainly there now. But we do not have substitutes, or do we?

Mr Janse: We do not have any other substitutes that are approved in Canada now. As I indicated to you, under the federal jurisdiction we would require approval for any other compound to be used for zebra mussel control through the Canadian pesticides act.

With respect to chlorine, there are two aspects. First, for drinking water we are not adding anything different than we currently add to drinking water, whether the mussels were there or not. We have used chlorine on any surface water supply for disinfection, for bacteria. The concentration is not increasing above that. There will be some increases in chlorine use at the plants because we are adding it earlier. With respect to industry, as I indicated, any discharge from an industrial facility must dechlorinate to get down to 0.01 part per million so that the discharge will not affect the aquatic environment in the lake. That is how we are controlling it.

Mr Ruprecht: We have heard this morning from Dr Stanley, I think it was—I could be wrong; it could be someone else—who said that the treatment with chlorine and the levels of chlorine are different between Europe and Canada. I am not a scientist, but he says the treatment

levels would be 0.5 in Europe and some regions, whereas in Canada they would have to be 2.5 to be effective. At least, that is what I remember from this morning. Your indications are that the levels could be 0.5 to effectively treat this zebra infestation. What would you say to that?

Mr Janse: I was not here this morning. In answer to that, based on the information we have been able to determine, the 0.5 to one part per million concentration of chlorine residual is effective in treating for the zebra mussel.

I do not know what he was referring to. There are two aspects you have to remember. One is that we are talking about a chlorine residual. In order to get a chlorine residual at that level you have a chlorine dosage of between two and five parts per million, which is the dosage we are currently applying to kill the bacteria. There is a chlorine dosage and a chlorine residual, and they are two different numbers and two different things.

Mr Ruprecht: My final question is about the research. As best as you can explain it to us, do we actually have enough research that would indicate that we are not with this treatment, which might increase, affecting other aquatic life or other life that might use drinking water from the lakes?

Mr Janse: With respect to the water plants, we are not impacting the aquatic life because the water is not going directly back to the watercourse. The level leaving the water treatment plant will be identical to what it is without zebra mussel control.

With respect to industry, one of the conditions on the certificate of approval is that they do a biological study in the lake in the cone of influence of their discharge, to see whether the levels we have determined they must meet now will impact. If it will, we will have to make the level lower.

Mr Ruprecht: You are quite confident, then, that there is impact, it is not out of the ordinary?

Mr Fleischer: The level of 0.01 milligram per litre in the receding water body that Jim referred to as the criteria is a provincial water quality objective. That means the objective has been designed scientifically for the protection of aquatic life. We are using that same objective to control the emissions of chlorine residual.

Mr Ruprecht: That may be, but I have asked you specifically whether, in your own mind, you would be confident enough that the treatment levels you are using would not affect either aquatic life or other life that impacts on the Great Lakes. That was my question. I do not want to put you on the spot, but the reason I am concerned about this is that we will hear other presenters later on who may be making that point. I want to have an answer, if possibly I can get one from you.

Mr Janse: I can respond to that. I am of the opinion that the levels we are seeking will not adversely impact. As a safety precaution, though, we have identified that we will have the survey done to provide us with more information to determine that.

Mr Ruprecht: When will that be out?

Mr Janse: Within the first year of operation of their facility they are to undertake the biological survey in the lake or in the body of water of their discharge to see if there has been any adverse impact.

Mr Waters: What you have stated is basically that you treat the water now with chlorine between May and October or whatever it is. Is the way you are going to treat it with chlorine, in the interim?

Mr Janse: We are treating water for bacteria control year-round if it is a surface water supply. For zebra mussel control we are going to treat only during the period in which the micro-organisms are there, which is June to October.

Mr Waters: From the hearing this morning and discussion since, it is my understanding that the critical times are when the mussels settle. As long as they are suspended in the water or after they have settled there is no real problem as far as what you specifically are looking at is concerned, the water intake. Apparently there is a two- to four-week period for each peak in their settlement; they have a peak settlement time. I think we have experienced in some years two settlement periods. Why would we be treating for so long when there are only approximately, at the most, eight weeks?

Mr Janse: The decision was made to treat whenever they are there. There are peak settling times, as you indicate, but as I understand it, they are produced over the whole summer, so you have some that will be larger than others over time, but I am not certain on that. The intent was that when the micro-organisms are there, to ensure that they do not grow in the intakes or settle in the intakes, that they are in fact killed.

Mr Waters: Have you looked at such a thing as a high-pressure backwash on a daily basis? They cannot get fixed to the pipes. That is something of an alternative.

Mr Janse: There are a number of what they call physical means of attempting to prevent zebra mussels from plugging pipes. The main difficulty we are running into is that our intakes were not designed of a size and access to actually get in and do those types of things. Some of those intakes are 1,500, 1,600 feet long.

We have in Tilbury, though, designed an intake where we put what we called an infiltration chamber in the bottom of the lake so that we do not have to use chlorine in that instance. We built a sandbed in the bottom of the lake which will filter out the water before it gets sucked into the intake. You cannot do that everywhere, though, because if your lake bottom is heavy clay in an area you will get siltation and it will plug up that system. So we have asked in our approval for any application that is submitted to us that they look at alternatives to chlorination, not automatically assume that chlorination is the way to go.

1500

Mr Jordan: I was wondering, in that the ballast of the ships are the main means of transportation, would it be feasible to treat that water with chlorine?

Mr Fleischer: Certainly I think that would have to be considered as one way of attempting to control the introduction of foreign species into Ontario, and in this case

Canada. We ourselves have not considered that as an option only because the provincial government has no jurisdiction over that kind of management of shipping. It rests with the Canadian Coast Guard, the United States Coast Guard and the Canadian federal government.

Mr Jordan: Would it make sense to pursue that, then?

Mr Fleischer: You would then have to adequately set up control measures to monitor the effectiveness of it or to measure the residual chlorine. Certainly there would be a large amount of chlorine residual introduced into the Great Lakes that could be of concern.

Mr Dadamo: I just want to go back to the chlorine thought. Is it the only known research solution that we have at the present time? Are we toying any other solutions to eradicate the zebra mussels?

Mr Janse: Maybe I can comment on that. There are some molluscicides, as I understand it, that are used in the United States for chlorine control. The difficulty you would have currently in Canada is that you would have to get that approved, as I indicated, through the federal government before it could be added to water, and to add them to drinking water we would have to have the necessary health studies and data to support that. Then it would have to be registered through Agriculture Canada. But there are some other compounds available to control zebra mussels.

Mr Dadamo: I know we have chlorine in our drinking water now. Would any more be damaging for human consumption?

Mr Janse: As I indicated to you, by moving the point of chlorination and the amount of chlorination required, we feel there will be some small increase in the amount of chlorine, because the water is not as pure where we are introducing it with zebra mussel control as we would without zebra mussel control. As far as the health-related aspects of it are concerned, the trihalomethanes is the health concern compound, and as I indicated to you we do require—I did not say that to you, but we do require monitoring for that. The levels that we are looking at, especially in the Lake Erie basin, are very low. One of the approval conditions is that they must monitor for THMs.

Mr Dadamo: How expensive would it be for municipalities to undertake this kind of endeavour?

Mr Janse: The monitoring?

Mr Dadamo: No. Actually the chlorine use if that were to be the only solution.

Mr Janse: The cost to municipalities will vary depending on the intake and the solution and how easy it is to install the facilities. It is going to be fairly costly; there is no doubt about it.

Mr Fleischer: If I may add to that, Ontario Hydro is involved in extensive research pertaining to examination of alternatives to chlorine. Certainly they are in the forefront in Ontario in conducting this type of work and we are in close co-operation with Ontario Hydro. We are attempting to set up better co-ordination throughout the province, as well as with the federal government and the United States. But Ontario Hydro is looking at other chemicals as well as use of heat, electric shock, filters, ultraviolet light,

even sound frequencies, in an attempt to find an alternative to the use of chlorine.

Mr Janse: If I may just add to that, as indicated to you, we look at chlorine as an interim solution. We know it works, we can apply it and we are currently used to chlorine, but it is interim in our mind.

The Vice-Chair: I guess, due to a time overrun here on this, I am going to ask Mr Ramsay to be the last questioner.

Mr Ramsay: I have one very specific question. You talked about that as we introduce chlorine earlier in the process, there is a bit of loss during the process, that we need a little bit of topping up to bring it up to standard. Is that loss taking place in the water treatment plant through evaporation?

Mr Janse: No. The loss I am referring to is it reacts with water for disinfection purposes, and if there are other compounds in the water they will absorb some of the chlorine. The normal process that we do is we top it up as it is discharged anyway, but you will have an increased loss in chlorine due to being absorbed by the contaminants in the water.

Mr Ramsay: I want to ask a more general question. You have really restricted your presentation to dealing just with zebra mussels. I was wondering more in general, as we begin to really start to combat these invasive species, is there some sort of protocol that is established so that if a government jurisdiction or a company wanted to, say, introduce a biological combatant, say bacteria, to burrow into purple loosestrife, for instance, how would we deal with that? Is there a class environmental assessment that is sort of there to deal with that or how would we deal with examining that introduction or proposed introduction?

Mr Janse: If you want to introduce something into a body of water for control of an organism, you require approval under our Pesticides Act. You also require that product to be registered under the Canadian pesticides act. Those controls are in place. They are for purposes of ensuring that the compound that is added is not going to adversely impact the aquatic environment but is added for the purposes for which the person wants to add the material.

Mr Ramsay: What if it is a biological combatant and it is on land, let's say?

Mr Janse: I cannot answer that question. I really do not know.

Mr Ramsay: I take it it would be against the law to do that.

Mr Janse: I would take it you would need some approval, but I really do not know the mechanism.

The Vice-Chair: Allow us to thank you, gentlemen, for coming in and giving us the MOE's perspective on this and how it is handling it.

Mr Janse: Mr Chairman, did you want a copy of these two reports? I can leave them with the committee if you so desire.

The Vice-Chair: Yes, please, if we could.

MINISTRY OF NATURAL RESOURCES

The Vice-Chair: The next group to come before the committee is a panel from the Ministry of Natural Resources. I would ask that someone introduce yourselves as to who is who.

Dr Balsillie: Good afternoon, members of the committee. My name is David Balsillie and I am the assistant deputy minister of the policy division of the Ministry of Natural Resources. With me today on my right is Chris Brousseau, who is the zebra mussel program co-ordinator for the Ministry of Natural Resources. As you heard previously, MNR has the dubious lead role in this particular situation. Chris is here to present the information on zebra mussels. On my left is Laurel Whistance-Smith, the manager of the habitat and stewardship section of the wildlife policy branch of the Ministry of Natural Resources. She is here to address the issue of purple loosestrife.

Following their presentation, we would be willing to entertain questions not only on these two organisms but also on the introduction of not only what we call introduced species in one sense, but also in the invasion of pests such as zebra mussels and purple loosestrife. We would be pleased to have that conversation with you.

I think we should proceed. We have tried to tailor our presentation. We are a few minutes over, but we are in your hands. We have tried to tailor the presentation so that it is fairly quick and straightforward so that there is enough time for discussion.

The Vice-Chair: I was just going to say that you probably were not here this morning. We have made some extra allowances for MNR so we have until 4 o'clock.

1510

Mr Brousseau: If I may before I start, would I be able to pass a sample of zebra mussels around to people.

Mr Ramsay: Is this on a cracker or with rice?

Mr Brousseau: It is on a rock out of Lake Erie. I just wanted to show the committee because I think, like myself, most of you have not seen zebra mussels. These are live zebra mussels, about a year old. You will notice some bigger ones that were taken out of a rock. The reason they are on the top of this rock is because the bottom half of the rock was actually in the mud when that rock was picked up. Have a look. So that you can always say that you will know what zebra mussels look like, I also have a preserved sample for each of you.

If I can start now, I would like to draw your attention to the overheads. What I would like to do today is to give you an update on the present distribution of zebra mussels in Ontario, tell a little bit about the various mechanisms for zebra mussels to spread and the difficulty we are going to have in preventing the spread, as well as tell you what the Ministry of Natural Resources is doing to combat the zebra mussel as part of the Ontario government's effort.

On the overhead in blue you can see that zebra mussels, where they started in Lake St Clair, have drifted downstream and by 1989 had completely colonized the bottom of Lake Erie. In 1990 they spread through the Niagara River and we now have colonies in the Toronto harbour area, Hamilton and along the south shore of Lake

Ontario. There are also colonies established in the eastern portion of Lake Ontario and in the St Lawrence River. This fall, just before freeze-up, we had reports of colonies in the Port Elgin area and Lake Huron.

I would just like to bring to your attention that a lot of times the press picks up on sightings of zebra mussels and a lot of times these sightings are what we call movable substrates. They are attached to the bottoms of boats and on. They are noticed when they come out of the water and in fact zebra mussel colonies may not be there, but they are there in terms of being attached to the bottom of boats. We have sightings of that nature in Thunder Bay and Lake Superior, and this fall when boats were taken out of the Ottawa River at Mooneys Bay, zebra mussels were attached to some boats there as well. So as of today, except for that sighting on the Rideau River, the zebra mussel colonization is restricted to the lower Great Lakes.

Where will they be in Ontario in the next few years? That is a good guess. This is one author's interpretation of where zebra mussels will be. Indications are that zebra mussels will spread across North America. The two lines actually represent temperature isotherms, the north being, I think, the 12-degree Celsius for reproduction. However, I just moved from that area and I can guarantee that they will spread entirely across Ontario because we do have water temperatures exceeding 12 degrees to 15 degrees in most parts of Ontario.

The thing to keep in mind with this distribution is that there will be lakes in Ontario where zebra mussels will reach very high densities and that they will have significant impacts on water intakes and the aquatic ecosystem, but there will also be lakes within Ontario where zebra mussels will not get to very high densities and will not have impacts. So we are looking at a wide range of impacts and a wide range of population densities across the province.

To give you an idea of how difficult it is going to be to stop this, there are several different mechanisms for zebra mussels to be transported, primarily the downstream drift of the larval form, and wherever zebra mussels are deposited upstream the larval form before they attach are free-floating and they will drift downstream.

Difficulty on boats, boat traffic from infested waters inland: Zebra mussels can be attached to boat hulls, motors, anchors and chains. The larval stage, the microscopic form, which is very important—this is why it is going to be difficult for people to see them—can be found in the bilge water on boats, live wells that people keep fish in or in the water coolant in their engines. There are several different ways for zebra mussels to attach themselves to boats at various life history stages, and it is extremely difficult for the average boat owner to actually perfectly clean and rid his boat of zebra mussels.

They can be transferred in bait-fish water, the bait-fish transfers from the Great Lakes inland. They can be attached to crayfish and also fish transfers from infested waters to other waters. They can be attached to fishing gear, such as commercial fishing nets that may be used in the Great Lakes and then used inland, or even sport fishing gear that may be used from one lake to another.

Float planes using infested waters: Not only can the adults attach themselves to the pontoon themselves, but the larval form will go inside the floats, because I do not think there are very many float planes that are completely free of water inside their floats, and it is possible that float planes can bring the zebra mussels long distances inland.

There are different vectors that we virtually have no control over. It has been shown that zebra mussel larvae can live in the moisture on duck feathers, for example. Insects can carry them, mammals such as beaver with water on their fur going from one pond to another and reptiles. If they are attached to a snapping turtle, for example, snapping turtles are known to move long distances overland from one water body to another.

Because there are so many different dispersal mechanisms, I think the bottom line here is that we cannot prevent the spread of zebra mussels in Ontario. We can only hope to slow the spread down to give us a chance to find some of the answers. We are going to have to learn to live with zebra mussels.

What is the Ministry of Natural Resources doing? We have been designated as the lead agency in this program. We are leading an interministerial co-ordinating committee comprised of the following ministries: Natural Resources, Environment, Intergovernmental Affairs, Tourism and Recreation, Treasury and Economics and Municipal Affairs, along with Ontario Hydro. We have sat down and discussed our information needs. We have integrated those information needs and out of that we have defined the Ministry of Natural Resources role, which obviously reflects our mandate and our area of expertise.

From that role we have basically taken on four major program responsibilities. I will go into each of these in a little bit of detail, but essentially they are program co-ordination and planning, invasion monitoring of zebra mussels, research into the impacts on the aquatic ecosystem and developing and delivering a corporate communications plan.

Program co-ordination: Why? I think we heard questions about duplication this morning. Program co-ordination is extremely important to maximize the effort in zebra mussel management, prevent duplication, focus the efforts of our program and it gives us a single contact to liaise and work with other agencies.

How are we doing this? We have established a zebra mussel co-ordination office, which has become the focal point of the provincial program. From there we are developing and delivering a provincial communications plan. We are responsible for co-ordinating the budget, work plans and audits of the zebra mussel program. We are co-ordinating research on zebra mussel biology, impacts and control measures and developing a central data base on these activities.

We are responsible for determining the long-term distribution, spread and impact of zebra mussels and, importantly, supplying that information back out to the users.

Liaison and co-ordination of programs with other agencies: We have already started contacts with our US counterparts and the federal government in terms of co-ordinating our programs. We are there to project Ontario's concerns to prevent the introduction of other exotic species and we

are here to act as a centre for scientific exchange of new information.

Scientific literature takes a long time to get into journals and so on, so we are trying to keep on top of research as much as possible and developing more informal mechanisms where we can get this information out to people in the field.

Invasion monitoring: Essentially what we are doing is monitoring the spread of zebra mussels. It is important to prepare for potential changes in the aquatic ecosystem, and currently to establish early warning networks. I think our US people talked about that this morning, so that users of the aquatic environment can implement control and mitigative measures before the zebra mussels get there and be able to predict what the long-term impacts of zebra mussels are.

We are doing this by monitoring the distribution of zebra mussels, their spread and their abundance over time. We can use this information as a network to provide information to users and hopefully to come up with more information to be able to predict the impact of zebra mussels.

As we heard this morning, it is very difficult to predict what the end result of zebra mussel population densities will be. We know in Europe that there are some cases where zebra mussels are experiencing what we think has happened in Lake Erie, where they start, reproduce very rapidly and then crash to some low level. But we also know of cases where zebra mussels have gone up and stayed up, and we know of cases where zebra mussels have never gone up and other cases where they are very cyclical over several years.

Hopefully by comparing the information learned from our monitoring program, we can then determine what water quality and habitat characteristics will allow us to be able to predict what these population densities will be in order to predict what the impacts will be on the aquatic environment.

We are planning to do this through our existing fisheries assessment unit network that is in place across the province, our district offices spread throughout Ontario, and other agencies. There are a lot of people doing monitoring of zebra mussels, such as Ontario Hydro, Environment, universities and so on and the public.

1520

We have had several requests from various organizations on how they can help in zebra mussel programs and we are currently developing a sampling protocol to be used by all agencies so that we can compare our results. This program will be extremely simple. We will have a network set up so we can feed back and forth to each other on the spread of zebra mussels.

Our preliminary area of research will be determining impacts on aquatic ecosystems. It is required to understand what is happening with zebra mussels in their new environment here in North America, how mussels are impacting native fish and vertebrates, what overall damage is being done to the aquatic ecosystem and what life stages could be most susceptible to control.

We are doing this by Natural Resources fisheries scientists under existing organization and we will be looking at various things such as impact on fish community structure,

habitat, nutrient cycles, food webs, predator-prey interactions and ultimately—and what most people are asking—what is the impact on sport and commercial fisheries.

It is very important that we have good co-operation and co-ordination with other agencies. We have already discussed with our federal and other provincial counterparts ways of doing this. We have been invited to sit on the US committee that was referred to this morning and will be co-ordinating our activities with its zebra mussel management programs.

Ontario Hydro, which you will hear from tomorrow, is a leader in industrial control research. It is important that we work together with other industry and universities to maximize our efforts. We will also be acting as a mechanism for science transfer and exchange of information.

The final area that we are responsible for is development and delivering a corporate communications plan. It is essential to create public awareness of the zebra mussel and associated problems, communicating initiatives and developments in zebra mussel research, control methods and distribution and so on. It has been the chief method that we have used to slow the spread of zebra mussels through public education and responding to public inquiries.

How have we done this? Over the last year, we have had a major communications effort put in place. We have sat down and looked at the various audiences that are affected by zebra mussels and we have come up with initiatives to try to address and get the message out to these various audiences.

I will not go through each of these, but we have initiated about 35 major initiatives. I think one of the packages the green kits you received, is an information kit that we have made widely available to the general public. We have given hundreds of these kits out. We have a slide show and video that is now across the province. We have almost 100 copies of that in circulation. We have produced posters and brochures and newsletters. In your package there, the copy of the plan outlines several of the activities that we have undertaken in communications.

Finally, I would just like to sum up by telling you about some of the recent activities we have done. We have initiated assessment, research and monitoring programs on Lake Erie, Lake St Clair, Lake Ontario and we are getting ready for pre-invasion monitoring on some of our inland waterways.

We are continuing to review our communications plan that was in place this year and to look at possible gaps and ways of improving things for next year. We have had feedback from the public on the effectiveness of some of our programs, such as our signs and so on, and we are taking that feedback into consideration.

I am now full-time co-ordinator responsible for developing a long-term plan on behalf of the Ontario government. We are currently preparing a paper and recommendations on spread vectors. By that I mean we are looking at all the different mechanisms that the zebra mussels can spread in the province, looking at the ones that we may have control over, and what we can do in addition to public education and communications to slow down or reduce the spread of zebra mussels.

We are setting up a central reporting of zebra mussel distribution spread, abundance and monitoring. Right now a lot of different agencies are out there monitoring zebra mussels. We hope to be able to come up with one central reporting of information, putting this altogether, everybody's information in one package, and using it as a complete network.

We are developing co-ordinating mechanisms with other agencies and we are looking at developing a central database not only for scientific information but for slides and audio-video equipment.

Essentially, we are responding to hundreds of request for information. There is a lot of interest out there on behalf of the public about zebra mussels. There is a lot of concern on behalf of the public on what impacts zebra mussels are going to have, and we are doing our best to keep up with those information requests.

The Vice-Chair: It has been suggested by Mr Ramsay that we deal with some questions on the zebra mussels, and then go on to the other. Does that affect your presentation or is it better?

Dr Balsillie: That is fine, Mr Chairman.

The Vice-Chair: Any problems with that from the committee?

Mr Ruprecht: In the previous presentation, we heard about the development of trihalomethane. In your communications and in your research, are you at all worried about this trihalomethane developing in the Great Lakes as a direct offshoot of treatment by chlorine? I guess it is only chlorine, right, or was there some other?

Dr Balsillie: Maybe I could respond to that. I used to be with the Ministry of the Environment, so I have a dual background here. The chlorine, when it is added to the water, as was explained by Mr Janse, reacts with organic material to create the group of compounds called the trihalomethanes. The "halo" is the chlorine part, and there are three chlorines attached to an organic molecule.

The concern with that is that in larger amounts, above the guidelines, they are considered to be carcinogenic and therefore they are not good necessarily to have in your water system in terms of drinking them. Low amounts are not considered to be a problem. The offshoot is that if you do not have the chlorination, then you have a whole series of other problems with your drinking water, things that we've overcome many decades ago in terms of the spread of disease, etc.

The drinking water containing trihalomethanes then goes through the system, is utilized, goes back into the sewer system and gets treated before it goes back into the waterway. So that is not considered to be a problem. Also, when the chlorine is added to the intake, it is added inside the pipe, so it is moved up the pipe. The chlorine is not dispersed into the water. I think this is the big distinction that has to be made, that there is a diffuser inside the pipe. When it goes into the system and into the water treatment plant.

Mr Ruprecht: So this does not act like PCBs, which you really cannot catch?

Dr Balsillie: No.

Mr Ruprecht: It goes right throughout the whole system and enters the food chain really. This is different.

Dr Balsillie: That is exactly right. It is entirely different. The chlorine is not willy-nilly put into the water, with the water to be sucked into the pipe. The water is sucked into the pipe and, as it is sucked into the pipe, the chlorine is added. Then the chlorine goes up the pipe with the water. You want to look at it as an early chlorination system, so that you do not chlorinate it in the plant, you chlorinate it in the pipe.

What you do is you kill the larvae in the pipe so that they do not have a chance to settle, as was pointed out over here, to get the foot of the larvae attached to the screens or to the pipes so that they then start to build on each other, as they are in the rock here, so that they build one on the other until they actually clog the system. But the chlorine is not introduced into the Great Lakes, it is introduced into the pipes and sucked up into the water treatment system.

Mr Ruprecht: And so is the trihalomethane, but you are filtering it out.

Dr Balsillie: On the way out, yes, through the sewage treatment process.

Mr Ruprecht: So in your mind, that is no problem?

Dr Balsillie: No problem.

Mr Ruprecht: I will sleep better tonight.

Mr Charlton: Obviously, there is not going to be any easy solution to this zebra mussel thing, but there was something that David Garton said during his presentation just an hour ago that did not hit me until after he had left. He essentially said—and this is not an exact quote of his words, but I think paraphrases what he said fairly closely—that there is evidence that zebra mussels had reached our waters on a number of occasions prior to successfully establishing themselves here and obviously something has changed to make for ideal conditions for success this time. We have had some minor climate changes over the two centuries, but it seems to me that the largest identifiable change that has occurred has been the gradual degradation of water quality in the Great Lakes over the course of the last 100 years.

In the scientific approaches that are being taken to look at this problem, has anybody focused on that at all, and is there any indication that perhaps with significant cleanup of the water systems in the Great Lakes, the problem may solve itself?

1530

Mr Brousseau: I think Dr Garton previously said that they may have been introduced a couple of times. I think what he was getting at was that they may have been introduced in one or two ships, probably one ship, in 1985 or 1986, based on our calculation of how old these organisms are. When they were introduced, they obviously found the environment here to their liking.

Mr Charlton: But he did also say that there was clear evidence that they had been introduced on other occasions and had not survived here and that something had changed to make this introduction a successful one. Those are not his exact words, but that is in essence what he said.

Mr Brousseau: Where they were deposited in Lake St Clair, obviously the habitat was to their liking and that is where they have initiated, essentially from that point, and where they have drifted downstream and have been carried upstream. The water quality here was more conducive to zebra mussel densities. It is a better water quality than a lot of cases in Europe.

One of the things in Europe which is very interesting is that, when we talk about zebra mussel densities here, some of the numbers we have heard this morning are in the several hundred thousand per square metre, which is very high, but in Europe, the high average densities are much lower, maybe 5,000 to 6,000 mussels per square metre. So the impacts there are much less than they are here. By having this good water quality for zebra mussels in terms of habitat, they have enabled themselves to basically population-explode. As they move into other areas, the habitat and water quality will affect them differently and there may be areas where they might not have much effect.

Mr Charlton: I understand that is the case. There are some areas in the Great Lakes where the zebra mussel population is just taking off, some where it is surviving but not expanding at any great rate and others where it does not seem to be catching on, at least not yet. What I am trying to get at is, is there an attempt to identify why that is the case? And in doing so, are you looking at more than perhaps just the temperature of the water at that location, the kind of plant life? Are you looking, for example, at the contaminants that may exist in the sediments in those locations?

As we know, in terms of currents around Lake Ontario and Lake Erie, for example, there are areas where you end up with higher concentrations of the chemicals we know exist right through the lake, but in certain pockets they exist in much higher concentrations; not just chemicals but other contaminants as well. I am just wondering if anybody has had a look at that in trying to identify why they do so well in some places and not in others, and why there are indications that we have had infestations before that did not survive and this one did.

Mr Brousseau: I think we talked about temperature. Calcium is very important. There are people trying to piece together, based on the European literature, the characteristics of lakes in terms of temperature and water chemistry and so on, trying to fine-tune those predictions of characteristics, to enable us to be able to predict here in Ontario where we can expect to have problems. But we are still a long way from being able to say, "In this particular lake, we will get zebra mussel densities at this rate."

Mr Charlton: I guess one of the reasons why this is starting to crop up in my head is because of the progression of information that we have received today. We started out this morning with background briefings on the original sources of zebra mussels in the USSR and so on, the movement of those through Europe after the Industrial Revolution, and their subsequent introduction here. It seems to me that the kind of time lines that are involved here may in fact be a significant clue to the way they have moved and spread.

Dr Balsillie: I do not think we have all the answers to your question. On the other hand, we have an opportunity to look at the establishment of zebra mussels in a number of areas across Ontario and I think, if we find that they fail to establish, for instance, despite the fact that they have been seen in Lake Superior, if they fail to establish there then there is a relationship between, say, the water quality, the temperature, etc., of Lake Superior vis-à-vis the water quality of the west end of Lake Erie. I think there is potential for that and I think those are the sorts of things which we will be looking at.

Mr Ramsay: You said in your presentation that we can stop the spread and we must learn to live with the presence of zebra mussels. In order to learn to live with this invasion of zebra mussels, do you anticipate any sort of regulation that will have to affect human behaviour that we can live with that, or do you think just the way we carry on with our sports fishery, boat transportation, etc., we would still be able to find ways to live with it without changing some human behaviour?

Mr Brousseau: We are wrestling with that right now. The approach we took in 1990 was a widespread public education campaign to make sure people are aware of zebra mussels, with the problems they can cause, and help them out in terms of some guidelines in terms of cleaning their boats off. The problem we are trying to come to grips with right now is that there are so many different spread mechanisms.

Say, for example, we were to restrict bait-fish transfers from the Great Lakes. In other words, we are going to close down the bait-fish industry in the Great Lakes as a method to reduce the spread of the zebra mussels inland. The concern is, if we do that, we will have a major impact on bait-fish operators. In fact, are we going to have an overall impact on the rate of spread of zebra mussels across the province? These are the types of questions I met last week in a workshop and we discussed all sorts of different mechanisms, but we are going to follow up with looking at those that we have some control over. Obviously water fowl or reptiles or mammals we do not have any control over. We will have another look at things like the bait-fish industry, boat traffic, to see if there is anything further we can do, in addition to our education and communications plan, that will have an impact and at the same time will not have significant impacts on a very small portion of the industry which may be only contributing to the spread in a very small way.

We are currently still working at those questions and we are preparing a discussion paper on that now and it will be going out and looking for comment and input from people on that.

Mr Ramsay: I would encourage you to do that, because as you had mentioned, the groups have offered help, and I think you would find, as with the overall environmental situation, people want to be involved and there may be some rather benign interventions that people could do. Whether it is waxing boat bottoms or whatever it is, get people involved, it may help in the long run and it is something.

You listed really what you are doing, starting off with the establishment of the office, and then listed from there what the ministry has been doing. Basically, how much money are you spending on the fight against the zebra mussel?

Mr Brousseau: Over the past year, we have put funds into those four major areas that I talked about in terms of the co-ordination office, the research we have begun on Lake Erie and Lake Ontario, invasion monitoring and the communications plan. To date, the Ministry of Natural Resources has spent close to \$1.1 million on this particular program.

Mr Ramsay: Just one last quick question.

The Vice-Chair: We have another full presentation to you yet and we still have questions here as well, so if we could move to Mr Cleary and Mr Johnson and move on to the next presentation.

Mr Cleary: Now that they have found their way into western Ontario, I would like to talk a little bit about the line of the St Lawrence Seaway, some of the water supplies to the villages and towns, and other water supplies where wells underneath the river. Are wells underneath the river as apt to attract zebra mussels as other types of water supplies?

Dr Balsillie: I am not familiar with the type of system that you are talking about, but I would envisage that they are drawing water from below the bottom of the river through a sand point of some sort.

Mr Cleary: No, I do not think so. To my knowledge there is not a sand point.

Dr Balsillie: It would be my understanding that if it is a reasonable distance below the bottom of the river, similar to the way Mr Janse indicated that they had built what they call the infiltration boxes around the ends of water intakes at Tilbury, for instance, the water supplies would not be affected, but I would suggest that those individual municipalities, if they have concerns, get in touch with the Ministry of the Environment to find out about the susceptibility of that case.

Mr Cleary: The other thing you had talked about was treating the water supply at the source instead of at the plants. To my knowledge, these plants do not have foot valves, so that could not be done unless that whole system was changed. Is that correct?

Dr Balsillie: That would be correct if the system were at risk. If the system were not at risk, then it would not matter. So I think the best advice would be for you to advise those municipalities to get in touch directly with the ministry, if they are not already ministry-run plants.

Mr Cleary: No, they are not ministry-run.

The Chair: In the interests of time, Mr Johnson has withdrawn his question. I appreciate that very much. So if we can move on to the second half of the presentation.

Ms Whistance-Smith: We turn now to a short discussion of purple loosestrife in Ontario. Purple loosestrife is a full, emergent aquatic plant of Eurasian origin that became established in the estuaries of northeastern North America

in the early 19th century. The primary method of spread appears to have been accidental via marine commerce. This species now poses a serious threat to native emergent vegetation in shallow-water marshes throughout the eastern and central regions of the United States and Canada. It is a serious problem in wetlands and irrigation systems.

The impact of purple loosestrife on native vegetation has been disastrous. The plant readily outcompetes native species and then forms dense, monospecific stands which appear to be able to maintain themselves indefinitely. It reduces the species' diversity, thereby reducing waterfowl and aquatic furbearer productivity, although we do not know a lot about its impact on wildlife generally.

In the United States, 190,000 hectares of wetland habitat have been lost annually and it is present throughout southern Ontario and as far north as Kirkland Lake in northern Ontario. The distribution limit for this weed is about the 50th latitude, but there is evidence that it is farther north from that even now. Management efforts to control the proliferation of purple loosestrife in Canada and the United States have involved legal status designation and various control techniques.

Purple loosestrife is not on the noxious weeds list for Ontario; however, some municipalities, such as the county of Bruce are passing bylaws declaring the plant a noxious weed. Although Agriculture Canada deals specifically with the sale of plants in nurseries, once purple loosestrife is declared a noxious weed in Ontario, if it were, local weed inspectors could remove it.

Removal of plants by hand is effective in eliminating purple loosestrife, and it is selective. However, it is very labour-intensive and therefore only practical in wetlands where plant density is low. Cutting reduces stem numbers in the short term and reduces seed production. However, many repeated cuts are necessary for long-term control and cutting may never eliminate purple loosestrife from a site.

Burning is not an effective management technique because the growing points on the rootstock are below the soil surface.

Manipulation of water levels has demonstrated some success in the control of purple loosestrife; however, this technique is not selective and not possible in natural wetland communities.

Ducks Unlimited in Ontario has indicated that it will be investigating the use of flooding as a management technique. Of course you know that they use water control structures on their projects.

The herbicide 2,4-D is not as effective as another one called Roundup, but selects only broad-leaved species and is thus likely to do less damage to native wetland species. This herbicide is recommended by the United States for controlling large populations of the plant.

Three beetle species are presently undergoing final screening at Virginia Polytechnic Institute and state quarantine facility in Virginia. Laboratory tests in Europe have indicated that these beetle species are highly host-specific and control purple loosestrife by feeding on various parts of the plant. Full implementation of such a biological control

program in the United States may take from 3 to 10 years. That is their estimate.

In Ontario, in September 1990 the Ministry of Natural Resources organized a purple loosestrife working group, up on the screen there. This group's purpose is to develop a strategy for the management of purple loosestrife, hopefully by around May. The group consists, as you can see, of representatives from a number of government agencies and non-government organizations. We have a couple of consultants who are involved with the group as well.

The current activities of this working group are investigating the status of current research and management practices in other jurisdictions, investigating the success and failure of public information approaches to the problem and developing options for a management strategy, as I said, in May, we hope.

Strategic options which the group will be considering include information compilation—some of the research that needs to be done is listed in that group on the left-hand side; public information dissemination ideas, which is the extension list there, and looking at control techniques such as the ones I mentioned earlier—herbicides, cutting, flooding, hand-pulling and biological control.

That is all I have to say at this time. We are a new group and just getting started on our work.

Mr Waters: When you talked about the beetles, you said that in 3 to 10 years they would be introduced, if at all. The question is, should they be introduced in the United States, once they have made that decision, regardless of what we say, does it really matter? Are they going to just naturally move into Canada?

Ms Whistance-Smith: Yes, we think so.

Mr Waters: In other words, if the US goes for it, we might as well say we are in for it too, because it would be just a matter of time.

Ms Whistance-Smith: I believe so, yes, but certainly we will want to consult with them, and I am sure they will want to consult with us because of that very thing.

Mr Waters: My concern would be that what they might have down in the warmer climate versus what we have here could affect things differently.

Ms Whistance-Smith: Yes. I do not know just how extensive their research is, but the beetles might not be able to live up here, for instance. We do not know that yet.

Mr Waters: Are we doing anything on it?

Ms Whistance-Smith: No, not that I know of.

Mr Ramsay: Just to follow on Mr Waters's question, I believe you said if the United States introduced the insects to combat the loosestrife, that we would get them here.

Ms Whistance-Smith: Yes.

Mr Ramsay: In the presentation, though, you said they were very host-specific.

Ms Whistance-Smith: Yes, to purple loosestrife.

Mr Ramsay: Okay. How would they transfer, just through winds and everything?

Ms Whistance-Smith: Yes, flying from one group plants to another.

Mr Ramsay: We would get this. Okay. My main question was, since we have got the working group we are certainly aware it is a problem, but we have not designated it a noxious weed yet. Why have we not done that?

Ms Whistance-Smith: The Ministry of Agriculture and Food is looking into that now. As I said, Bruce Coulter has already declared it a noxious weed locally. If enough municipalities do that, my understanding is that the Ministry of Agriculture and Food might then put it on its list of noxious weeds of Ontario. That is my understanding.

Mr Ramsay: So you would not make your recommendation to the ministry. You have been waiting for that other ministry to respond to the problem?

Ms Whistance-Smith: They are part of our working group and we are asking them to look into that end things, yes.

Mr Ramsay: Okay, thank you.

Mr Ruprecht: Yes, I just had a quick question. I have heard from Dr Stanley this morning, and he said that probably the most effective method was to pull the plant out by the hand. If anyone should call our offices about how to do that, would you recommend that that is done in the fall, in the spring, and how often should that be done? Do you have any experience in that, in other words?

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Ms Whistance-Smith: I do not have any experience in it, but I guess there are some people who have tried it and it is a very good method for small populations. I think it has to be done in the spring or before the plant flowers—that is really their recommendation. But there is a way of doing that so that you get the whole root. And you have to be very careful about how to get rid of the plant, otherwise it will propagate from the cuttings or the root pieces. So this public information campaign about how to do that would be very helpful, and that is one of the things we will be looking into, how to get that information out to people.

Mr Ruprecht: Maybe you can put a pamphlet out.

Ms Whistance-Smith: Yes, that is what we plan to do. But if you have anybody interested in doing some of that locally, our office would be happy to—

Mr Ruprecht: No, I might end up doing it in my lot, have seen them already.

Ms Whistance-Smith: We would be happy to tell you exactly how to do it.

Mr Ruprecht: Okay, you come along and show me.

Ms Whistance-Smith: Okay, that is fine.

Mr Charlton: There are two areas I would like to pursue. First of all, I think you said that the working group is working towards trying to have some kind of a strategy in place by about May.

Ms Whistance-Smith: Yes.

Mr Charlton: Does that strategy include, presumably how you are going to approach the question from the perspective of research that we might do here in Ontario?

Ms Whistance-Smith: Yes, that would. These are options for management.

Mr Charlton: To follow up Mr Waters's question of earlier, if the working group were to determine that the beetles are one of the more promising approaches to the whole question, the working group may recommend that we do some of our own research around those issues here to determine both from our perspective whether that is the right approach and whether climatically it is going to work here even if somebody else's research shows it may work somewhere else, that kind of thing?

Ms Whistance-Smith: Yes, we could do that.

Mr Charlton: None of that is precluded at this point?

Ms Whistance-Smith: No.

Mr Charlton: It is just not happening at the moment.

Ms Whistance-Smith: That is right.

Mr Charlton: My second question relates to all of that, because my sense is, and you can correct me if I am wrong, that although we have now identified this as a problem and we are working to develop a strategy, until now at least the purple loosestrife has not been seen as being as critical a problem as the zebra mussel one we have been talking about. It has set on very quickly and it has had a lot of publicity and it has been escalated as a priority topic very quickly. The purple loosestrife obviously has been around for a long time and we are only now starting to recognize it as a problem in terms of its priority.

On the other hand, we have over the past 20 years identified our wetlands as extremely sensitive and important parts of our ecosystem in this province, and it seems to me that as a priority the protection of our wetlands has to be very high on the list. Is it the view of those who are working in the working group to develop a strategy to try to upgrade the importance of the purple loosestrife as an issue that requires high priority and intensive attention?

Ms Whistance-Smith: I cannot speak for each of the members of the working group, but the fact that this group was struck out and is a co-operative group, a partnership of all these interested parties, I would think that there is some feeling we should be doing something and doing something fairly quickly. But the plant has been around, as you point out, for quite a long time. It has only started to take off in the last 30 years or so, I gather, and only really coming to our attention in the last few years, the amount of it around. So it is just one of these things that we have to deal with. As you also say, our wetlands are so precious to us and we are spending a lot of money in that area, so we want to be able to protect them from being invaded and being taken over by this species.

Mr Charlton: Maybe the ADM is in a better position to respond to the question of the priority of the issue in terms of the overall importance of the wetlands in Ontario.

Dr Balsillie: Certainly. The wetlands have become a focal point of discussion over the last little while and we were coming forward, I guess, once again, with the revisions to the wetland policy. We are looking to a very strong protection policy for the wetlands within the province. As the purple loosestrife impinges on those wetlands

and if they are going to be something which is going to take over and change those wetlands so that they are no longer the same sort of environment that we are dealing with now in those wetlands, then certainly we are going to be looking to some way of trying to control them.

The difficulty we see is that some of the fixes are just as bad as the loosestrife itself. In other words, you do not want to go in and spray the wetland, because the impacts on the wetland from Roundup or 2,4-D, or whatever, could be as bad as the loosestrife itself. This is why we are looking to something such as the US approach, where we may be able to introduce a biological control which would be compatible with a natural wetland strategy, which would help us out considerably. The problem with that is that with the timing it may be too far down the road. On the other hand, you do not want to rush something like introducing three species of insects, because you may introduce three species of insects that are worse than the loosestrife.

Mr Charlton: I agree. Maybe I can short-circuit the answers here just by saying I took it from the presentation that we were not going to get all the answers as to what the preferred solution in Ontario would be today. I guess what I am trying to get out of you is—

Dr Balsillie: Yes, it is a priority.

Mr Charlton: —a sense of the priority this is going to get in terms of finding that solution.

Dr Balsillie: Yes. We will be there.

Mr Ramsay: I just want to get a point of clarification. I believe in the introduction of this presentation it was pointed out there would be, as we have had the presentation on zebra mussels and loosestrife, questions on those and then I imagine there is some time. I do not know if you have any other presentation of a general nature of invasive species, but I believe then we were going to have a little bit of a discussion in general on invasive species.

The Chair: My understanding is that they have addressed them, I think, more in two specific areas. We have a small amount of time. If they wish to provide some more insight in terms of a general strategy, certainly they can do so, but we are limited in time.

Mr Ramsay: I have a question. To me the history of the MNR has been that the ministry has been quite enthusiastic in the past about the idea of introducing and reintroducing species into the environment here. To be fair, I think that was a direct reflection on the culture out there and our thinking in regard to the environment. Obviously, the thinking of the general population has changed dramatically in the last 10 years and maybe even more so in the last couple of years.

I was wondering, with the battles we are now undertaking with these involuntary invasions of these species that we have been discussing today, if that has changed at all the ministry's thinking of our voluntary introductions and potential introductions of species into the environment.

Dr Balsillie: You have made the clear distinction between voluntary introductions and invasions and that is the way we look at it ourselves. Introductions are controlled

by either the Game and Fish Act or the federal Fisheries Act and there are quarantine requirements and all sorts of restrictions and controls in those areas.

In terms of things which we would like to introduce or reintroduce into the environment, we are looking very closely at that. We are coming forward in the not-too-distant future with a series of amendments to the Game and Fish Act which will control much more closely introductions and also things like game farming and other activities in that area, so that we do have better control on disease, so we do have better control on animals and birds and other things not getting free into the environment which could then cause us difficulties.

On the other hand, invasions are something we have very little or no control over and they usually arrive by some sort of manner over which we have no control. So things like ballast water, which should be exchanged at sea, are beyond our jurisdiction, things such as importing logs on which insects become free to fly around, or wood material which comes in with termites in it.

It is very hard to try to control all of those. We find ourselves almost always in these situations in a reactive mode, to try to then understand what is going on, look at the distribution and spread, do some research on the control, then move into the area and try to stem the damage and do that type of activity. So the two of them are very distinctive and I think in the past we have won some and lost some.

On the sea lamprey, I think our record is not too bad in terms of trying to control that, get rid of it and reintroduce,

once again, some of the trout and salmon species into the system. On the other hand, something like Dutch elm disease only reached its natural level of control, except for very few trees which were highly protected with a lot of spray. We did not win the Dutch elm disease. The white elms are essentially few and far between nowadays.

On the one hand we are trying to move to control introductions. On the other hand, with invasions it is a backward fight.

Mr Ramsay: Has our thinking progressed to the point where maybe we would now question the idea of introductions at all, that maybe we should not be tampering with the environment at all?

Dr Balsillie: I think it is a fair statement. We are examining whether we should be putting certain species of fish into the system or whatever. We are looking at that. You know, you only have to turn on the TV on Sunday and watch the fisherman's show and he says, "Now if the Ministry of Natural Resources only got its act together and put lake trout in here instead of the backcross." So those messages are certainly being heard.

The Chair: Any further questions? Thank you very much. We appreciate your spending this extended amount of time with us and you have provided a lot of very good information to the committee. That is the last scheduled witness for the day. We will recess until 10 am tomorrow morning.

The committee adjourned at 1603.

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Wednesday 30 January 1991

**Standing committee on
resources development**

**Zebra mussels and
purple loosestrife**

**Assemblée législative
de l'Ontario**

Première session, 35^e législature

Journal des débats (Hansard)

Le mercredi 30 janvier 1991

**Comité permanent du
développement des ressources**

**Moules zébrées et
salicaire commune pourpre**



**Chair: Bob Huget
Clerk: Harold Brown**

**Président : Bob Huget
Greffier : Harold Brown**

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 30 January 1991

The committee met at 1007 in room 228.

ZEBRA MUSSELS AND PURPLE LOOSESTRIFE

Resuming consideration of the designated matter, pursuant to standing order 123, relating to zebra mussels and purple loosestrife.

The Chair: I will do what I can to sum up in terms of where we are in the process of these public hearings. Yesterday we heard witnesses with scientific and resource management expertise. Those witnesses also provided us with current research findings and areas which they felt needed more attention. Today we will hear from users of water resources who might be adversely affected by exotic species, and particularly the zebra mussel. Our witnesses today will outline their research efforts, control measures and economic and other impacts on their operations.

ONTARIO HYDRO

The Chair: Our first witness this morning is Ontario Hydro. The presenters are Paul Wiancko and Renata Cudi.

Mr Wiancko: I have copies of my presentation here that I can give out now or later, whatever you want.

The Chair: We will take them now.

Mr Wiancko: Okay. What you have in front of you is a presentation that will represent Ontario Hydro's contribution to the standing committee. I will read this into the record and then be available for questions on our programs.

Thank you for this opportunity to address the standing committee on resources development on the issue of zebra mussels. Ontario Hydro is an industrial leader in the protection and long-term research for mitigation options. The following presentation will outline the extent of recent problems at our facilities, update the committee on our response to these problems and highlight our long-term research program that will eventually lead to mitigation options.

I would first like to tell you a bit about the corporation and the extent of our mussel problem. On the Great Lakes, Ontario Hydro has seven fossil-fired, five nuclear, one heavy water plant and four hydraulic stations. In addition to this, there are another 60 inland facilities and numerous plants that could be eventually vulnerable to zebra mussels. These hydro facilities represent an installed production capacity of approximately 28 gigawatts.

Ontario Hydro is the largest raw water user in the Great Lakes. These facilities can utilize up to 90 million cubic metres of water per day, of which 85% is used for steam condenser cooling and 15% is used in plant services. Since the majority of condenser cooling water flow exceeds two metres per second, the speed at which mussels cannot attach, much of our zebra mussel control is aimed at the slower-moving service water systems; that is, that

15%. Service water is mainly used to cool small equipment such as bearings, fluid couplings, transformers, etc. It is also used in the fire protection system, water treatment plant makeup, wash-down systems and emergency backup systems. In any one facility, there are miles of service water piping, generally in the range of less than 0.3 metres in diameter.

For zebra mussel control, Ontario Hydro has adopted the philosophy that any mitigation options will prevent the settling of veligers as opposed to the cleaning of adult mussels from the service water piping.

To date, only our Nanticoke fossil-fired station in Long Point Bay, Lake Erie, four hydraulic facilities on the Niagara and Welland Canal system and the Lakeview fossil-fired station in Mississauga have experienced heavy accumulations of zebra mussels. However, mussels have been identified at or near all of our Great Lakes facilities, from the Bruce nuclear power development complex in Lake Huron as far east as the Saunders hydraulic generating station near Cornwall, Ontario.

At our Nanticoke station, which has been affected the most, we are measuring seasonal populations of mussels at about 700,000 animals per square metre. From one of our 16 cooling water pump wells this past year, we removed about five metric tonnes of mussels from the walls and intake screening systems. This cost us about \$10,000 for that one well.

In 1990, Ontario Hydro installed sodium hypochlorite, or chlorine, injection systems at all of our 17 Great Lakes facilities. Approximately \$10 million was spent in the design, procurement and commissioning of these systems. These systems are designed either to inject chlorine at two parts per million of total residual chlorine for a half-hour every 12 hours during the mussel breeding season—this is from about May until October—or they can inject continuously at 0.3 to 0.5 parts per million, depending on the cooling water dilution rate prior to the discharge reaching the lake.

Operation of these chlorine systems is governed under the Ministry of the Environment certificate of approvals process. One condition of these permits is that the discharge of sodium hypochlorite to the lake cannot exceed 0.01 parts per million of total residual chlorine. This level is 30 to 50 times less than the provincial drinking water guidelines. To ensure that the 0.01 parts per million concentration is not exceeded in the outfall channel, all facilities have installed continuous chlorine analysers. Compliance reports on the operation and monitoring of the chlorine system are submitted to the Ministry of the Environment on a monthly and annual basis. In addition, benthic samples, or basically bottom-dwelling animals, are collected at each site prior to and following the mussel breeding season. These benthic samples are used to assess

any potential environmental impact resulting from our chlorination practices.

In 1990, Nanticoke used approximately 263,000 litres of sodium hypochlorite for the seasonal treatment of mussels. Emission levels were generally less than the 0.01 parts per million, and no detectable limits of trihalomethanes, THMs, were recorded.

In addition to installing chlorine systems at our Great Lakes facilities over the last year, Ontario Hydro has been very active in many other areas dealing with zebra mussels. I would like to list a few of these items.

We have been active in dispersion sampling for veligers in eastern Lake Erie, the Niagara and Welland Canal areas and western Lake Ontario, and we have installed what we call sampling blocks and plates at most of our facilities. These blocks and plates are used to monitor the arrival and seasonal buildup of mussels.

We established major communication networks with many stakeholders with the production of two videos, production of monthly newsletters, which we share with the Ministry of Natural Resources, and membership on several co-ordinating committees. These include the Ontario Hydro Zebra Mussel Co-ordinating Committee—it meets on a monthly basis—the Ad Hoc Interministerial Co-ordinating Committee set up by the Ministry of Natural Resources, the Electrical Power Research Institute Advisory Committee in the United States and the Lake Erie Zebra Mussel Working Group. We have also produced a public information pamphlet, a copy of which is in the handout.

We have given numerous talks to agencies, universities, industries, schools and private groups. We assisted the Ministry of the Environment in developing provincial guidelines for the approval of sewage work permits to deal with zebra mussels and the federal government in its decision to allow the use of sodium hypochlorite.

We have established a major zebra mussel culture colony at our research facility in Toronto, which is probably one of the largest in North America, and have built a mobile test laboratory for use in the field. This is a big semi-trailer truck. We have extensively tested and developed mechanical cleaning technology for use at Ontario Hydro facilities. We are sponsoring the first industrial conference on mitigation options for industry to be held in Toronto next month on 11 and 12 February.

Through our leadership in the mussel area, we have influenced the management plans and research of over 30 organizations. Those 30 organizations are attached. Finally, we have initiated extensive research studies on the development of long-term chemical, physical and mechanical mitigation options. At this time, I would like to outline some of this research.

In 1990 Ontario Hydro commissioned approximately \$1 million worth of research to examine potential long-term mitigation options. This research has concentrated on the use of chlorine, ozone, live-dead mussel determination, gamma radiation, ultraviolet light, acoustics, mechanical filtration, electric shock, thermal shock or the hot water aspect, pressure, mussel attachment and antifouling coatings. An outline of the status of this research is attached to

this presentation. However, I would like to summarize briefly a few of these studies.

First of all, thermal shock: Thermal shock was assessed as a method of killing the adult zebra mussel. Ontario Hydro research has indicated that the total kill of adult mussels can be assured by raising service water temperature to 36 degrees Celsius for four hours or 37 degrees Celsius for two hours. The Bruce heavy water plant may be the only facility that can utilize this process at a cost of about \$100,000 per year.

1020

Coatings: The coatings that were first evaluated in the field in 1990 included coal tar, epoxy, copper, wax, silicone rubber, polyurethane, epoxy/polyamines and teflon. Results have shown that only two of these coatings are effective against first-year zebra mussel attachment, and both these coatings are the silicon-based polymer paints. Further tests will continue in 1991. In fact, some of the coatings have been applied to our bar racks and are in the field being tested now.

Electric shock devices: The objective of this study is to determine an electric shock device which will produce 100% mortality of zebra mussel veligers. Small mussels were exposed to electric fields ranging from 300 to 500 volts per centimetre, with a maximum power consumption of 250 watts for 0.1 to 90 seconds in a test cell. All experiments were effective in stunning the mussels for two hours. Additional work in this area will be undertaken by Wisconsin Electric in 1991.

Pressure: In this program, juvenile zebra mussels have been subject to both vacuum and high-pressure testing to determine whether or not they are affected in any way. Tests have indicated 100% mortality was obtained when pressure exceeded 30,000 psi and dropped rapidly. Presently, tests are being conducted to determine whether or not mussels will attach after being exposed to various pressures for different time periods.

Mechanical filtration: Of the parameters examined to date, mechanical filtration seems very encouraging. Filter types examined include hydraulically operated self-cleaning filters, disc filters and strain-o-matic automatic self-cleaning strainers. Further studies are planned, I think, at the Nanticoke station in 1991.

Mechanical cleaning: A number of different diver-operated tools and techniques have been tested in 1990 at the Nanticoke fossil-fired station. Continuous-flow, eight-centimetre, air-operated pumps equipped with a scrap assembly were the best available option for cleaning vertical walls. The divers will be using this technique in the future.

Acoustics: The objective of this study is to determine the effectiveness of sound as a control measure for the destruction or settling of veligers in raw water systems. Sound frequencies investigated to date range from approximately 1,000 hertz to 20,000 hertz. Both frequency and amplitude of the sound were found to influence mussel attachment and mortality. Further work in this area will be done in 1991.

Gamma radiation: The feasibility of using cobalt-60 gamma source to control mussels has been investigated

gamma doses of 1, 3, 10, 30 and 100 kilorads have been tested, with a calculated source strength of 332 rads per second. The radiation times ranged from 3 seconds to 311 seconds. The results to date are inconclusive, due to the high mortalities in control groups. Further studies are planned in 1991.

Ultraviolet light: UV control is aimed at preventing the settling of the semitransparent post-veligers. Two domestic water sterilizers have been recently received, and tests are to begin.

Ozone treatment: The objective of this study is to determine the dose of residual ozone that is required to prevent the attachment of and/or to kill zebra mussels. Results will yet to be reported on this topic.

Mussel adhesion: Ontario Hydro is cofunding with the provincial government a University of Toronto study to determine the effect of surface tension and roughness on mussel attachment. Experiments are presently under way. I refer you to attachment 2 for more details on the study.

This concludes our presentation to your committee. Ontario Hydro is committed to the research for long-term mitigation options and will continue to inform government agencies and industries of the results on an annual basis.

Mr Ruprecht: I am personally quite delighted to see that there are so many different methods you are analysing to try to come to grips with the problem. However, on page 2 you indicate that in the systems you have installed many of your power plants, which are close to the water, you are using an injection level of chlorine at two parts per million during the zebra mussel breeding season. Can you tell this committee whether, in your studies, such high levels of chlorine you are injecting would affect the other aquatic life?

Mr Wiancko: We have done some studies as to what levels of chlorine will actually kill the veligers. Our approach is to use at least two parts per million to kill the veligers and for the shortest period of time as required, which is about a half hour every 12 hours.

When that two parts per million enters a pipe, all the veligers that have settled for the last 12 hours will be killed, and then that water is diluted by this 85% of the condenser cooling water, so you have quite a large dilution of that water before our station outfall water enters the lake. At that point, we are down to 0.01 parts per million, which is very low.

Mr Ruprecht: If I understand this correctly, the zebra mussels are in the intake pipes.

Mr Wiancko: In the service water pipes. They will not be on a service water pipe if we do not chlorinate. It takes two parts per million to kill those veligers.

Mr Ruprecht: This is the case in how many stations?

Mr Wiancko: All of our facilities that we have on the Great Lakes.

Mr Ruprecht: In all the facilities zebra mussels are in the intake pipes.

Mr Wiancko: At Nanticoke, the seven facilities on the Niagara and Welland Canal and Lakeview; they are

already in those systems. If we did not chlorinate, they would be in those systems.

Mr Ruprecht: But my question concerned the effects of these fairly high levels of chlorination. You are saying, just to make it clear, that from your studies you can assure this committee that this treatment of two parts per million is not affecting, at all, any other aquatic life. That is what you are saying. Am I understanding you correctly?

Mr Wiancko: That two parts per million is not getting into the—

Mr Ruprecht: I understand that. Your treatment is not affecting any other aquatic life. I do not know what will come out in the final analysis when you treat two parts per million. I do not know whether it is 0.01, 0.05; you might have those statistics. I am asking the question whether, as you are making this presentation, you are quite certain in your own mind, or Hydro is, that these high levels of treatment, whether intake or out-take, are not affecting any other aquatic life. That is my question.

Ms Claudi: In the area of the plants where we are treating, we take extreme precautions that no aquatic life reaches that part of the plant. There are two levels of protection before that water ever enters the service water piping. First, the bar racks exclude all the larger fish. Second, the travelling screen picks up all the smaller fish and so on. Behind that is what are called strainers, which strain out all the debris, such as suspended material and most of the aquatic life. By the time that water reaches the service water piping, there is very little except bacteria, extremely small algae and zebra mussel veligers left in that water. When we are treating in that section of the plant, there is no other aquatic life present to speak of.

1030

Mr Ruprecht: Let me just continue this one more time. In your presentation you are saying that chlorine treatment is only temporary, until you find a better way. Correct?

1030

Mr Wiancko: Correct.

Mr Ruprecht: Is this statement you are telling this committee that it is not affecting any other aquatic life. Do you have any idea how long you can continue treatment at these fairly high levels without affecting any other aquatic life?

Ms Claudi: From the studies that the Ministry of the Environment has done, where it is treating the discharge water from that sewage treatment plant and the discharge is about 50 times higher than what we are discharging into the lake, I think it has concluded that it is not really doing any irreparable damage, and we can only take its study as a basis for ours.

Mr Ramsay: I have two questions. I was a little surprised with regard to your research, that you were quite hopeful about mechanical filtration, because yesterday we heard from other witnesses that they were not really sure that filtration would be able to strain out the veligers fast enough for the quantities of water that would be required by many of the industrial operations such as yours. I was

wondering if you could elaborate on that, because that would be quite hopeful, that maybe filtration could do it in the future.

Ms Claudi: The development of these strainers is a fairly novel technology. They have been around for maybe one or two years in the final testing. In any case, the mechanical straining will probably only be appropriate for small systems that pump less than 50,000 gallons of water a day. With anything larger than that, you would have severe problems. The reason we are doing a pilot study rather than an immediate retrofit is that there are a lot of other problems associated with small-pore strainers like these, 80 to 50 microns, such as bacterial buildup, slime, etc. We just do not know how well they are going to perform.

I would also like to caution everyone that mechanical strainers may be the answer for small systems, but on large systems where you would be straining an awful lot of water you might run into the problem of affecting other aquatic life that normally would pass through the plant unharmed. They are not the answer for everyone or every system, but they are a hopeful development.

Mr Ramsay: During the first question by my colleague, I was able to refer to page 2, your second submission, to read in a little more detail the gamma radiation treatment. Could you put in lay terms exactly how you utilize radiation in trying to effect this? I am sure there would be concern out there. I did not really understand, even reading your second piece on that. Maybe you could put in lay terms how that works.

Mr Wiancko: I am not an expert in gamma radiation, but the way I understand it is that cobalt-60 right now is used to sterilize foods and so on. Our new business ventures was quite interested in this component. If we can sterilize food, can we sterilize the water system and kill off all the bacteria—

Mr Ramsay: Rather than use chlorine.

Mr Wiancko: Rather than use chlorine. What we are finding in this study is that the water going through our pipes is flowing too fast to get the exposure time needed. We expect that this part of the program will be dropped this year, that for our large system this would not work.

Mr Klopp: On gamma radiation, "The results to date are inconclusive due to high mortality rates in control groups." Could you explain that?

Mr Wiancko: Whenever you do an experiment you always have a control group. In our first round of experiments with gamma radiation, we had a high mortality in the control group. If you have a high mortality in the control group, how can you compare the test group? Now they have to redo that study.

Mr Klopp: What was killing them?

Mr Wiancko: It was just natural mortality. It is very, very difficult to keep large cultures of mussels alive. I think we have spent probably close to \$200,000 right now trying to develop a good culture at our research facilities out at Kipling. There is a lot of money being spent in this area right now, because we want to have breeding mussels all year round so that we can experiment with veligers all

year round. Right now, we only have veligers between July and December, which is only five or six months. If we could have these things breed all year round, we would have a larger population of veligers to work with and could do more experiments, but we are having a lot of trouble keeping these mussels alive and the veligers alive.

Mr Klopp: So they go dormant for six months and they regrow, start over again.

Mr Wiancko: Basically, yes. We are trying to adjust the temperature of the tanks and so on and trying to shift their breeding season, but it is very difficult.

Mr Cleary: One question I have to ask about the treatment of mussels: Where do you dispose of them and what do you do with them?

Mr Wiancko: Right now all the mussels that we clean out of our stations are going strictly to landfill.

Mr Cleary: Are they all dead?

Mr Wiancko: Yes. When we scrape down the walls of our pump wells and so on on an annual basis, they are put into a large bin and then shipped off to landfill.

Mr Cleary: I read the attached sheet here on electric shock, but I am still not clear how that works.

Ms Claudi: There was some reason to believe from European literature that electric shock either kills or disables the veligers and prevents their attachment. The studies were done in Russia and the results were dubious at best, but it seemed enough of a reason to try to duplicate those studies here. We used the extremely small mussels, the ones in the three-millimeter range, and exposed them to various levels of electric shock and observed their reactions. Yes, we were able to stun them and, yes, we were able to prevent their attachment.

The problem with using electric shock is more of an engineering one. How would you safely put something like that in a plant and how well would it work in a scaled system? Because we are sharing our research with a number of other utilities, Wisconsin Electric decided to take the next step to see how it could build a pilot electric trap, if you wish, that we could test on a small facility.

Mr Cleary: So the electricity would be in the pipe?

Ms Claudi: It is more a passing of electricity through the water where the veligers are and zapping them in process. It is passing electricity and relying on the conductivity of the animal to move the current through.

Ms Churley: I want to follow up on the chlorine question. Obviously, it is considered to be an interesting method. I think everybody is aware of that. It is clear that you are doing a lot of research. In terms of your research first, what are the problems you see associated with using chlorine even in the levels you talk about, for instance, trihalomethanes, which, as you know, at high levels considered to be carcinogenic? What other problems are there with using them? What do you think, in your view, chances are of finding more environmentally benign solutions to this in, say, one or two years? What is your assessment of that? Do you have a view of what is looking to be the best method?

Mr Wiancko: On the chlorine issue, the quantities of chlorine we are using right now are fairly small. The levels we are injecting and releasing from our station, as I say, are well below any guidelines that exist right now, any known levels of harm. We have used chlorine for years.

040

Ms Churley: When did you start using it?

Mr Wiancko: For zebra mussels, it was this past year. We have used it in our condensers for biofouling control. We must keep our heat exchangers and our condensers clean of algae and so on, and we have been using chlorine for years to keep these condensers clean so the heat transfer will work properly.

Personally, from the Hydro perspective, the chlorine we are using and the levels we are emitting to the lake are well below any possible environmental levels of harms. As you say, we have been measuring for trihalomethanes. The instruments have not picked anything up so we do not know if there is anything there at all. We just cannot measure it. It is just too low. So there would not be any levels here. Again, we are 30% to 50% lower than drinking water quality, so you are ingesting levels of chlorine 30 to 40 times higher by drinking water than you would from this water we are discharging from our plants.

On the idea of what research will come up with in the near future, we hope within the next three to five years to have a number of options we could apply to several of our stations. We do not feel any one option will be the answer. For example, we may be able to use coatings on our exterior features: our bar racks, our pump wells, our screens and so on, those systems that could become heavily coated with mussels and fail. On the external features we could use maybe some coatings; internally, maybe filters, the possibility of using ozone, other viable options.

Ms Claudi: I think any final solution will be a combination of many of the methods we are looking at, but if they are going to be necessarily more benign than chlorine, I think that is up to the community at large to evaluate.

Ms Churley: Can I ask you to clarify on trihalomethanes?

The Chair: Very briefly, Ms Churley. We have one final question from Mr McLean. We have exceeded our time.

Ms Churley: You test regularly for trihalomethanes. I just want to clarify that nothing is penetrating.

Mr Wiancko: No. We are using one of the better labs in Canada and we have not been able to detect it with the equipment they have.

Mr McLean: That is quite a list of organizations you have been involved with. You meet once a month?

Mr Wiancko: It depends on what organization.

Mr McLean: Do you have representation on that committee from the Ministry of Natural Resources?

Mr Wiancko: Yes. That is the ad hoc committee.

Mr McLean: Have you helped the municipalities that get their water out of the lakes, or have you worked with them? How have they been affected by it?

Mr Wiancko: We have been working with Jim Janse from the Ministry of the Environment; I guess he was here yesterday. We have been working with him on our use of chlorine and getting approval to use chlorine. I think both the Ministry of the Environment and ourselves feel that chlorine is the only option we have today but in future we will have a longer list of options we will have to look at.

Mr McLean: That was one of my other questions. How close are we to finding a solution to this problem?

Mr Wiancko: I am saying three to five years before we have an option that would be worth installing. For example, we know a couple of coatings that will work on the first-year population of mussels. But will that particular coating continue to work, say, for three to five years? It is very expensive to have to paint our facilities every year. Some of these paints cost about \$10 a square foot to put on, so we just cannot go painting our facilities every year. We are looking for coatings that will last three to five years and we have only been through one year, so I think you have to ask that question in another two or three years.

Mr McLean: Do you anticipate that most of our inland lakes will have zebra mussels before we find a solution?

Mr Wiancko: If the conditions are right, there will probably be some spread into those areas.

Mr McLean: Are you going to increase the amount of money—about \$1.1 million or \$1 million—you are spending a year for research and that type of thing?

Mr Wiancko: Yes. We have budgeted about \$1 million per year to do research, but as far as I know we are the only industry doing any research. The Ontario Petroleum Association has helped to fund some of our programs to the tune of \$100,000, but it is the only other sector that has been doing any work on the research aspect.

Mr McLean: What about New York hydro? What are they doing, equally the same as you, or what is their participation?

Mr Wiancko: Renata has been more involved with them.

Ms Claudi: I think their level of spending is lower than ours and we are co-operating very closely to make sure that we do not duplicate any research, because there is not enough money to go around for that. We are sitting on a couple of committees in the United States, the Electrical Power Research Institute Advisory Committee, which is where all the utilities that belong to the Electric Power Research Institute get together. We make sure that none of the research gets duplicated as well as having sort of on-the-side meetings with New York Power and Light and Detroit Edison and a number of other utilities around the Great Lakes. So we have been very actively co-operating and seeking their input.

Mr Wiancko: We are trying to ensure that two different groups are not doing the very same research. We are trying to influence what research is being done so there is no duplication going on. So far we have been very successful in that area. There are a lot of people doing research, but in Ontario I think we are the only industry doing that.

Mr McLean: The local hydro owned by the local municipalities, are they coming to you for guidance on this? They have the same problem.

Mr Wiancko: They buy the electricity off us, so they would not have their own water intakes and would not have a problem. But they do have the small hydraulic dams, which are owned by Ontario Hydro in most cases; there are some private ones.

Mr McLean: I have no further questions, but I just want to thank them for their help on behalf of Jim Pollock. I know you participated and we want to thank you for that.

The Chair: Would the panel have any specific recommendations or advice they would like to leave with the committee?

Mr Wiancko: No, I do not think so. We will co-operate with any government agencies because we are trying to encourage more people to do research. We do feel we are out there on our own, responsible for our own problems, and we are hoping to get other industries involved in funding research as well as the government agencies. This conference we are having in Toronto in a couple of weeks will, hopefully, bring together some of those parties, and maybe you can talk about doing some joint research with other groups.

The Chair: Thank you very much for a very informative presentation. We will take about a five-minute recess in order to set up some visual equipment and will reconvene with the Lambton Industrial Society.

The committee recessed at 1050.

1057

LAMBTON INDUSTRIAL SOCIETY

The Chair: Our next witness this morning is the Lambton Industrial Society. The Lambton Industrial Society will focus its presentation on the serious impact of zebra mussels upon operations along Samia's Chemical Valley. Appearing this morning is Ron Denning of the Lambton Industrial Society. You may proceed, Mr Denning.

Mr Denning: It is a privilege to be in front of the committee today. What the society thought would be of benefit to the committee was perhaps to give a brief slide presentation to put some of our comments in context before we give you the formal submission. I estimate perhaps eight or nine minutes of slides, approximately 10 minutes of oral and then I will of course be open to questions from anyone.

Samia-Lambton is located just to the southern tip of Lake Huron. It happens to be the riding of Mr Huget, of course. This is the outlet from Lake Huron as it flows past Point Edward under the Bluewater Bridge linking Ontario and Michigan. The water in this area—it is called Bluewater land—varies in colour depending upon the time of the year and the light. The colour of the water is actually caused by minute particles of clay that are trapped and cause the light to become diffuse and to give it this quite aquamarine-type colour at times.

I would bring the committee's attention to the plumes that are coming in from Lake Huron into the head of the St Clair River and to the clarity of the centre of the river. At

this point the water is flowing at about 1.4 million gallon per second. It is an enormous flow of water, drawing very large quantities of suspended solids into the river.

Samia: Another view looking north from Samia. To gain perspective for the comments I am going to make today, I thought we would just show you we are located in an office in downtown Samia directly across from the city hall. In fact the Lambton Industrial Society is an environmental co-operative and to understand our perspective beg your indulgence. I will give you just a couple of minutes on exactly what type of an organization it is.

We are a monitoring organization with offices that are essentially storefront, open to the public. We spend approximately \$1 million a year in direct monitoring of the environment. Our purpose, and we have been around for over 30 years, is to promote and foster improvements in the environment, consistent with government regulation and good corporate citizenship. We are local in scope. We only do work in Lambton county itself. We do not have any offices outside the area whatsoever. It is strictly Lambton county organization.

All the funds used by this organization come from the 15 member companies, which are all Canadian companies on the Canadian side of the St Clair River, and the organization is non-profit. We do not involve ourselves in selling anything. We are simply an organization that gathers direct environmental information in the area.

Essentially 80% of our funds go in environmental monitoring of all types: air, land and water. The monitoring is not just gathering information. In actual fact through some quite sophisticated computerized systems we issue environmental alerts to industries and provide information directly to the Ministry of the Environment or concerns in the area.

I am appearing before you today really because as a subset of our charter, we are obligated to make timely comments on local environmental issues, and it is this local perspective that I want to bring before the committee today. It is a much narrower perspective perhaps than previous presenters.

We are essentially a science organization and therefore are keenly interested in things which can impact the environment locally. We are a people organization. Six committees meet every month. This happens to be a working committee of the board of directors of the Lambton Industrial Society. As a matter of interest, the board is made up of the plant managers of all of the member companies.

We interface heavily with the public and have for decades been holding annual meetings at which we provide to the public, to government, to interested citizens, to environmental groups from both sides of the St Clair River the findings of the monitoring programs of the society. This type of activity in fact was recognized in 1988 by the Conservation Council of Ontario when it awarded the society the first-ever Lieutenant Governor's award for contributions to the environment and conserving the environment.

To some more specific points, I showed you the St Clair River, the head of the river and the bridge. In the presentation I will make shortly and the written submission

ou will note that zebra mussels were first found in the upper reaches of the river just to the south of the bridge. This is a view of the St Clair River from below the bridge looking south, and the first zebra mussels were found about 15 feet down in the water in this region by the Ambton Industrial Society's consultant. This is a picture of the first mussel found near the St Clair Bluewater bridge in May 1990.

I am sure you have seen this one before. This is courtesy of the Ministry of the Environment. One mussel does not mean very much, but in a very short period of time—we understand that was only about eight months' exposure to veliger-infested waters in Lake Erie—one can rapidly build the level of buildup that is possible. This type of buildup is of serious concern to the society.

To give you a feel for the kinds of problems that industries of this nature can face, this is a view of Sarnia Chemical Valley looking north from the Indian reserve, near the Sun Oil bend. Suncor is in the foreground, the Dow property, Polysar now owned by Bayer, Imperial Oil, Fiberglas, Cabot Carbon. This is the upper half, if you like, of Sarnia Chemical Valley. You would notice several things. First, the older plants are all on the river. They all use large quantities of water straight from the river for cooling purposes, and they also all use water from the river as fire protection—water drawn into fire loops. We will be making direct reference to that in our presentation. Another view shows the intensity and the complexes that are involved in this particular area.

Of course there is a lot of shipping in the area. In the early 1980s this river carried the combined traffic of the Dnieper, Kiev and Panama canals put together. Although that traffic is now down quite considerably, it still none the less is an important waterway. Ships need water free of zebra mussels too. This, I believe, is the longest terminal of its type in the Great Lakes, and this is located on the St Clair River.

This is not a very good chart, but what we were showing you before was the upper part of the St Clair River and the Chemical Valley. These are further plants from the Corunna area and even farther south there are plants. There are major petrochemical complexes in here in this area that depend very greatly upon water.

Again just another view to give you an idea. We are talking of distances, by the way, of approximately a mile in terms of breadth here and perhaps a total distance of 12 miles or so of actual plants. Modern plants, the latest plants to be built, are all being built well back from the river—miles inland—and of course if history could be repeated, I am quite sure that every company in the area would in fact be building plants well away from the river itself. This would avoid the pollution concerns that everyone has these days.

I would like you to note again, however, that this shot shows a thin strip of water, a panel of water, that runs along the Canadian side of the river. There is the centre channel with the main flow and then there is the US side of the river which similarly has a slower-moving panel of water that hugs the US course. These physical factors are

going to impact on the way zebra mussels will settle and will affect the plants in this area.

Also note that there are still considerable amounts of suspended solids in the water that is coming in from Lake Huron. This is clay, because this is a clay region. I am just returning back to that very point. It is important to understand the potential impact on our area. It is important to understand the size of this river and the swiftness with which it is flowing.

I am not going to go to sleep, but at this point I am going to go into the written submission for the committee. I hope the few slides have given you some sort of a picture to augment the submission we are bringing before you today.

I have introduced the society. We are largely a technical monitoring organization, expending 80% of the \$1-million annual budget on testing. The testing is carried out by independent consultants such as Ortech International and Pollutech Environmental Ltd. The society does not monitor directly individual plant emissions, water or air. Clearly that is the purview of the Ministry of the Environment. But for decades we have been carrying this work out, in fact since about 1952 when our forerunner was formed.

We are not a political organization in any way, not politically aligned, but we strongly promote co-operation as the driving force for environmental improvement. It is in this spirit that we bring a perspective to you today. We are going to largely restrict our comments to Dreissena polymorpha, zebra mussels, and developments concerning that species in the St Clair River.

As the standing committee knows, zebra mussels were first confirmed in lower Lake St Clair several years ago. At that time the water committee of the society—one of the committees that meets every month—was keenly interested in the discovery and we asked our consultant, Pollutech, to initiate a physical search of the areas in the river which had been part of our historical monitoring programs.

The committee placed the potential for zebra mussels' presence in the St Clair River on the technical program in 1988 and it has been a part of our water program ever since. At that time our industry experts identified three major threats should zebra mussels be found in very significant numbers in the St Clair River. The first of these threats was the potential for these creatures to seriously compromise the petrochemical industries' ability to contain fires or vapour releases should they occur.

As I commented, most of the plants in this area rely upon fire water drawn directly from the St Clair River. One has to understand the magnitude of the volumes of hydrocarbons in the area. A city water supply would be inadequate if there were a major event.

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The second major concern that was identified was the potential for zebra mussels to foul heat exchanger surfaces or restrict water flow. This could result in the potential for temperature control problems. In the case of the chemical industry, of course, inability to control reaction temperatures or to provide adequate process cooling could result in environmental and/or safety incidents. So it is the short-term aspects of this that were of serious concern to the society.

There is a potential in the third one for there to be deterioration of river water quality with consequent environmental damage or use impairment if various plants along the river embarked upon poorly co-ordinated programs of zebra mussel control. The society recognized that you cannot have plants doing their own thing one after another after another, introducing different chemicals, etc.

In addition to the river being a source of drinking water, of course, the manufacturing facilities along its length use it for chemical processes as well as cooling. It is not commonly recognized that municipal drinking water is not of a high enough quality for many industrial applications.

Following the discovery of zebra mussels in Lake St Clair, various of our member companies initiated zebra mussel monitoring programs in 1989. In March 1990, the Lambton Industrial Society hosted a meeting of major water users in our area—member and non-member companies—so that they could pool their findings to date.

At that time, Wayne Wager of the local Ministry of the Environment and Dr Griffiths of the London Ministry of the Environment provided an excellent background on mussel biology, their known distribution through the Great Lakes at that time and some potential treatment regimes. An information network was established under the co-ordination of Ted Kierstead, who is one of our Lambton Industrial Society water committee members. I believe Mr Kierstead was going to attempt to make it here today to answer questions later, if possible.

Companies at that time expressed serious concerns that government had not got its act together. Gaining permits for treating water intakes with chlorine-based products, the only guaranteed method available at that time, was delayed by staffing levels and the permit approach of the Ontario Ministry of the Environment's approvals branch.

Similarly, it was stated that the federal government had declared zebra mussels to be a pest and chlorine was not an approved pesticide. The situation has changed, of course. The specific use of chlorine to kill the larval forms of mussels, veligers, was in question at that time. What we are saying to the committee is we have to understand the potential dangers when you are talking about petrochemical facilities when red tape interferes with protection. Safety is critical to units of this nature.

The urgency of the local situation changed quite dramatically in May 1990. Up until that time there had been no zebra mussels seen in the St Clair River north of Port Lambton, which is on the map. While diving at the head of the St Clair River, Tim Moran, local manager of Pollutech, made the first sighting of zebra mussels in the upper reaches of the river. He located just two adult zebra mussels near the head of the river, less than a kilometre south of the Bluewater Bridge, as we have shown. It was conjectured, and it is only conjecture, that fishing boats from Lake Erie which wintered over in that area probably brought a small colony of mussels on the outside of their hulls.

Since then, many more sightings of the mussels and veligers have been reported along the Canadian shore of the St Clair River—there is a chart on the back that identifies populations, etc—though it must be emphasized that at

their current known population density they do not represent an immediate threat. We believe 1991 will be the year when the public begins to notice these creatures in our area.

We have some things going for us. Fortunately the swift-flowing river tends to inhibit the ability of the larva forms to settle on hard surfaces in the river. Apparently excessive turbulence in back eddies is also fatal to the creatures. Because of these factors, it is difficult to predict how rapidly the mussels will spread or just how much of a problem they will become. But because of the potential severity of the threat, the society has taken a lead in promoting co-ordinated control action in our area.

At another meeting convened jointly by the society and the Ministry of the Environment in July 1990, and we work closely with the ministry, there were two goals accomplished. It provided an opportunity for the information of the various zebra mussel surveillance programs in the area to be shared, and it provided an opportunity for the ministry's approvals branch personnel from Toronto to describe in detail the procedures and expectations of zebra mussel control programs and the approval process.

There are concerns expressed by industry which we wish to bring to the committee today. Really, all the local industries recognize the potential for serious safety and environmental consequences if they could not treat incoming water. One of the things the Ministry of the Environment insisted upon was a residual chlorine discharge criterion of less than 10 parts per billion. As such, that was not the problem; the level was not the concern, though the level is about 50 times lower than what you will find in typical drinking water out of your taps.

The monitoring, however, by the certificates of approval being issued around that time by the ministry specified that that level of 10 parts per billion of residual chlorine had to be measured continuously. Although that was laudable, and we certainly appreciate efforts to protect the environment, reliable, accurate, continuous measurement at 10-parts-per-billion level could not be guaranteed by any instrument manufacturer contacted by our members at that time, or as far as we know even today.

One has to appreciate that such criteria specified on a certificate of approval provide an automatic opportunity, for enforcement. In the current climate of enforcement activity, such a situation is unacceptable. There needs to be an element of reason and co-operation involved in this process.

In some ways this situation is analogous to the way the Ministry of the Environment reports suspended solids in plant water discharges. The ministry insists upon reporting only gross numbers: the total number leaving a plant, for example. Because of the natural clay in the water, and you have seen that very well here today, the fact is that many of the plants in our particular area, although they are cleaning up the river water in the sense of removing solids, none the less on occasion, following storms, etc, there are going to be high suspended solids in the discharge.

By simply reporting gross numbers to the public, the impression is created that these plants are in fact dirty plants with respect to suspended solids. That is not the

pe of situation that really needs to be continued. The me situation will occur with this 10-parts-per-billion continuous monitoring requirement. It is not possible to accurately measure continuously at that level, to the best of our knowledge. Consequently, it is quite likely that there will be plants throughout this province that will be in violation of their certificate of approval, which frankly was unrealistic in the first place. This is not sensible co-operative effort to improve the environment.

We have some hopes for the future and we are bringing our concerns to the committee on this basis. Zebra mussels are not the only exotic species showing up in the St Clair River. Indeed, few appreciate that this waterway contains more species of fish than any comparable section of the Great Lakes. I am sure that is a surprise. Recently, the Asiatic clam has been discovered below the major industrialized zone of the St Clair River.

The society has some requests, if you wish, of the committee. We are urging this standing committee to further the protection of our Great Lakes by pursuing three recommendations.

First, we suggest avoiding expensive duplication of effort by enhanced communication of zebra mussel information. The conference to be held in February, being hosted by Ontario Hydro, is one way of ensuring that those who need to know get to know. That is an excellent initiative.

Several other initiatives are under way. For example, a small company in our area called SR Metal Coatings Ltd, which is a non-LIS member that attended the first meeting, has in fact taken some innovative approaches. This kind of information needs to be shared too.

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The second thing we would like to suggest to the committee is that there are strengths in Ontario. We need to promote co-operative resolution of intergovernmental jurisdictional differences over how to best approach this exotic species problem. Prevention is certainly better than cure.

When faced with real concerns like zebra mussels, municipalities and industries should not have to wait for government to get its act together before being able to act decisively. Such action, in our opinion, should be co-operative and could be made without fear of subsequent enforcement.

Third, we would like to promote a recognition that the vast majority of organizations want to do what is right and proper environmentally. However, a co-operative abatement approach, not setting arbitrary and unattainable end conditions, needs to be the approach. Certainly it is the one that the society recommends.

We are urging the adoption essentially of the 80-20 rule. We all realize that we can frequently get 80% of a goal for 20% of the resources needed to achieve 100% of the goal. We tend to forget, though, that once the 80% is attained, there is nothing stopping you from applying 80-20 again. With the current state of economic affairs, 80% achieved and renewed is preferable to 100% beyond reach, and we urge this committee to consider that principle in its deliberations.

In conclusion, we hope the above has provided some food for thought to the standing committee on resources

development. We trust that our society will be kept informed of the progress as the committee generates recommendations. Without doubt, your focus is important to all those who live and work in the Great Lakes region.

I will answer any questions you may have.

Mr Waters: One of the things you talked at great length about is what is happening on the Canadian side of the river. Do you have any knowledge at all as to what is happening on the other side?

Mr Denning: We are aware that they have been found. On the final page, there is a picture there showing the Marine City region of the St Clair River. Mussels were reported in 1989 on the US side. In fact, they were reported there before any were found on the Canadian side.

We have to assume from problems further south, in Monroe etc, that the US side is probably in worse shape than the Canadian side. But in the absence of major petrochemical type plants on the US side, it does not pose the safety concerns that we are bringing to you today.

Mr Waters: So basically the Sarnia area and the Port Huron area are not jointly working on any of these things at all.

Mr Denning: No. We invite folks from the US side of the river to come to any meetings, etc, but we have no members on the US side of the river.

Mr Waters: The previous presenter mentioned that they filed monthly reports with MOE. How often do you file yours?

Mr Denning: The society does not file monthly reports because our members provide information to the local abatement officers. So where there are asterisks on the final page where monitoring programs are going on, that information is conveyed routinely to the ministry. A lot of these initiatives, by the way, are not being undertaken in terms of any legal requirement. It is something we have asked companies to undertake in terms of, "Let's get all the information together and see what the threat really is."

Mr Waters: Finally, as a society, are you looking at any alternatives such as what Hydro and other presenters mentioned?

Mr Denning: No. In fact, the Lambton generating station, which is on the St Clair River, is one of the members of the society. We rely heavily for research purposes on the activities of those organizations and internationalists. We are very small in those terms. We are basically a monitoring organization rather than research, but we are keenly interested in making sure that information is disseminated.

Mr Ruprecht: We really appreciate the time and effort you put into this and your presentation. I would like to know, judging by your 80-20 rule in recommendation 3, how that would affect the 10-parts-per-billion rule presently imposed or, for want of a better term, regulated by the MOE.

Mr Denning: In reality, it would not affect it at all because the 10 parts per billion, first of all, we maintain cannot be continuously measured on a routine basis. We question that seriously.

Second, if 10 parts per billion—which is 1/50th of typical drinking water levels—water is entering a river flowing at 1.4 million gallons per second, quite evidently the concentration very rapidly drops below the 2-parts-per-billion ambient criterion that is in effect in Ontario. We see no impact on fish; we see no impact on any species, frankly.

But it is site-specific. It would be very different if you were talking about the Grand River or the Don. Here we are talking about water flow of a rate that is more than going over the Niagara. One of the things that I would hope the committee would consider is, rather than absolutes, looking at specific situations, the risks involved and the potential impact to the environment. Clearly, in a situation with an enormous flow of this nature, it is a different situation.

Mr Ruprecht: That is precisely my point, I think. I was quite happy with what you said were the objectives of the Lambton Industrial Society. What you are trying to accomplish is quite worth while. Do you have any information that would speak to the effects of chlorine discharge into the St Clair River or into the Great Lakes?

Mr Denning: Yes, we do. For example, this is the only region of the country, let alone the province, that hourly tests the river automatically for trihalomethanes, specifically for chloroform, which was a concern of a member. Every hour, 24 hours a day, 365 days a year for the last three and a half years our consultant has been testing that river using automated equipment. We do not see trihalomethanes in the river.

Mr Ruprecht: That is not totally my question, even though it is partially my question. The question was, does your society know the effects of discharge of chlorine, however minute, into the Great Lakes? Do you have any information on that? Do we know about that? Do we have studies on that? Do our scientists even tell us what the effects are?

Mr Denning: There are innumerable reports available in the literature on chlorine levels, on trihalomethanes, on the impact of these substances, potentially on many, many species. This is nothing new. Chlorine has been used for 70 years, as you are well aware, in terms of municipal treatment. With the exception of the occasional fish kill in the 1960s, which did occur in our area and certainly has occurred in other areas, all our monitoring, which has included *Daphnia* monitoring and many other types of monitoring, not specifically aimed at chlorine but aimed at the environment to see what is going on out there, does not indicate a problem. We placed in the record over \$2 million worth of St Clair River reports two years ago for the consideration of this committee and any other committee.

Mr Ruprecht: So, from your perspective then, we are cautious enough and we do not need to be any more cautious.

Mr Denning: I think we need to be realistic. If drinking water plants are discharging 50 times this level, if the routine municipal plants are discharging many times this level, we have to weigh that against what is the downside if zebra mussels were to get into a petrochemical facility and compromise safety. If you compromise safety, you are

not going to be worrying about a few *Daphnia*. You are going to be worrying about things that are far more serious.

I would hope this committee recognizes that if you lose cooling completely on operating units that are continuous units, you are talking about very serious potential hazard not what may happen 70 years from now but what will happen on the short term. I do not believe that in the general discussion this has been recognized enough.

The Chair: Mr Denning, thank you for taking the opportunity to be with us and provide your recommendations.

The Chair: Thank you, Mr Denning, for taking the opportunity to be with us and provide your recommendations.

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CANADIAN COAST GUARD

The Chair: The next witness is the Canadian Coast Guard, represented by Michael Turner, Tom Fleck, John Grinstead and Dave McMinn.

Mr Ramsay: No uniforms?

The Chair: No uniforms. They are out of uniform today.

Mr Turner: May I begin by thanking the committee for the invitation for us to appear today and make a short presentation on this subject, copies of which we have of course provided. I would like to begin as well, if I may, by introducing those who are with me. I am Michael Turner, I am the deputy commissioner of the Canadian Coast Guard and I am based in our headquarters in Ottawa. Our technical expert on this particular subject of ships' ballast water control, chief of our pollution prevention, regulatory and special projects division, is Tom Fleck. Also with us today and who can join us at this table if there is a particular question or concern in their area, are Captain David McMinn who is our regional director general for the central region of the Coast Guard responsible for all of our operations in the Great Lakes, and John Grinstead, who is our regional manager of ships' safety for the central region. Ships' safety is one of our branches within the Coast Guard.

Over the past couple of years, citizens of both Canada and the United States have certainly become acutely aware of the ecological damage which can be caused by the introduction of foreign species to the Great Lakes. I think it is now generally accepted that one method which can lead to the addition of new species to these waters is the discharge of ships' ballast water taken on in coastal areas or freshwater rivers or lakes. It is this particular aspect that I propose to address today. I also propose to provide for you a brief summary of the measures that are currently being taken by the Canadian Coast Guard to reduce the ecological risk that is posed to the Great Lakes waters by the discharge of ships' ballast water. It should be understood, though, at the outset, that these Coast Guard measures are aimed at preventing the introduction of new species, not the control of those nuisance species such as the zebra mussel, which was the subject of the presentation you have just heard.

To begin with, it might be appropriate if I could provide a bit of technical background from the marine point of view on the use of water for ships' ballast. Ballast water

essential to the safe and efficient operation of seagoing ships. Its uses include preventing a ship from overturning due to lack of intact stability; improvement of the propulsion efficiency and manoeuvrability of lightly loaded ships; prevention of structural damage from heavy seas that can result from what is called slamming action; and the limiting of hull-bending stresses due to non-uniform loading. It also, of course, when the vessel comes inland, allows the vessel sufficient headroom clearance under bridges and other obstructions.

For some heavily loaded bulk carriers, such as you see operating in the Great Lakes, ballast water may also be carried in the tanks located high up in the ships so as to reduce excess stability in those cases and minimize violent rolling action under certain kinds of conditions and thereby minimize the risk of dangerous shifting of cargo.

The amount of ballast water that is carried varies considerably from ship to ship and may account in some cases for up to 30% of a ship's dead-weight tonnage when it comes in. For a foreign-going ship entering the Great Lakes, the quantity of ballast water being carried can be as high as 12,000 metric tonnes. On the other hand, about 4% of visiting ships carried no ballast into the lakes at all during the past year, according to our figures. Based upon our work on this subject, we calculate that up to one million metric tonnes, or about a billion litres in other words, may be discharged by ocean-going vessels each year into the Great Lakes.

Let me speak now about the kinds of actions that we have been involved in and what we have been doing on this subject. Within the Coast Guard, we first became aware of the serious nature of this issue in July 1988. At the annual joint meeting of the Canadian and United States coast guards held under the Great Lakes Water Quality Agreement, a representative of the Great Lakes Fishery Commission, who I note will also be making a presentation, reported the recent discovery of three new non-native species in the Great Lakes waters. These were the European river ruffe, the spiny water flea and the zebra mussel. The Latin names are provided in the presentation; I will not even attempt their pronunciation. I might note that at the time it was in fact the European river ruffe, a small predator of fish, that was the primary concern of the fisheries commission.

In response to those concerns expressed by the Great Lakes Fishery Commission that ballast water was the likely source of these introductions, the Canadian Coast Guard, in association with other authorities, has moved quickly to introduce a series of experimental ballast water guidelines for application at the start of the 1989 Great Lakes shipping season. These guidelines, although not mandatory, called upon ships to exchange ballast water if it was taken on in foreign coastal and freshwater areas for deep sea water that was less likely to contain or sustain organisms that would survive in the freshwater environment of the Great Lakes.

Ecologically speaking, the middle of the ocean is an environmental desert. There are very few species there living in the surface layer of the water and those that do live there do not survive well in fresh water and vice versa.

Freshwater species do not survive well in the saline water of the open ocean. Therefore this type of exchange, pumping out the ballast water and taking in salt water at sea, is one of the primary tools that we are examining as a way to control this problem. The guidelines in improved form were again applicable during this past shipping season for 1990.

If I may, I would like to outline briefly how this ballast water control process operates. Under the provision of these guidelines, copies of which we have provided for your committee, all ships intending to enter Canadian ports from the Atlantic, and specifically if they are bound for Montreal or Great Lakes ports, coming up into fresh water in other words, are interrogated by the Coast Guard prior to their entering Canadian waters with respect to their compliance with the ballast water control guidelines. This is done through the mandatory reporting procedures of the Eastern Canada Vessel Traffic Service. This is a regulatory service we operate, often referred to quickly and in shorthand as ECAREG, in which all ships coming into Canadian ports are required on the east coast of Canada to report 24 hours before they reach here and obtain a clearance to enter. At that time we interrogate the ship as to a number of issues with respect to its estimated time of arrival, what it is carrying, dangerous goods, condition of vessel and essentially whether it meets all of the regulations and safety guidelines that are applicable.

The ballast water interrogative, as we now call it, forms a part now of this broader ECAREG interrogative and provides the Coast Guard with information on this particular issue. It also, as I said, touches on the vessel's compliance with the various Canadian and international marine safety regulations and other relevant data.

At Les Escoumins in Quebec, where the pilots normally would come on board, foreign ships are boarded by the pilot who provides the ship's master with a copy of the ballast water guidelines, which we provided to your committee, and its attached reporting form. The completed reporting form is then used for monitoring purposes and it is handed in as the ship transits the St Lambert lock at Montreal. Those few ships that are unable to comply with this at-sea ballast water exchange process are asked to retain their ballast while they are in the Great Lakes, or in those cases where that is not practical and there is no other option, they can discharge it into the St Lawrence River before entering the Seaway.

Now let's look at the question of what results we are having to date with this kind of a process. On the basis of the ballast water exchange reporting forms we have had returned for the 1990 year, the indicated rates of compliance with this process and with the guidelines are 97% in terms of all reporting. However, to verify those reported compliance rates and to confirm the effectiveness of ballast water exchange in destroying unwanted freshwater organisms, the Coast Guard, in co-operation with the federal Department of Fisheries and Oceans, has commissioned the University of Toronto to carry out a ballast water sampling and analysis program from this past year's samples. Laboratory analysis of these gathered samples is not yet complete, but the preliminary microscopic examination of

these samples has failed thus far to find evidence of live freshwater organisms in the samples that have been taken, which at least suggests that this ballast water exchange is an effective approach. We are hoping to continue this program, by the way, this coming year, hopefully with some funding support from the United States Coast Guard.

A question that is commonly asked with respect to this program is why voluntary guidelines were initially chosen rather than a mandatory approach. In other words, why do you not just have an immediate regulation? The reasons are largely related to safety. Ballast water exchange at sea can be hazardous for some ships having poor intact stability when they are operating in heavy weather or in heavy sea conditions. For a maximum effect, ballast water cannot simply be circulated, but should be pumped out completely before taking on salt water ballast. The free-surface effect in a ship tank during that slack period, when you are only partially filled during any kind of at-sea exchange of ballast water, can exacerbate what might be an already dangerous situation for some ships.

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Now, most large vessels normally experience little difficulty in carrying out this kind of at-sea exchange. They do a tank at a time and there is not too much difficulty. But the Canadian Coast Guard and indeed the entire international maritime community cannot knowingly introduce a mandatory provision that would jeopardize the safety of any ship; nor would any competent master knowingly comply with a regulation that put his ship and crew at risk.

I think we have to also keep in mind here that the vast majority of vessels that are entering and leaving the St Lawrence River system and the Great Lakes from foreign ports—in other words, they could be bringing in this kind of contaminated water—are foreign-flag vessels, not Canadian, and any regulation we might develop must of necessity comply with Canada's obligations under the various international maritime safety and pollution prevention conventions to which Canada is a signatory.

In addition, while the eventual goal of the Coast Guard is the application of a mandatory system of ballast water control preferably based upon a safe and practical application of this ballast water exchange option I have been describing, additional work does remain to be done.

To overcome safety impediments, a necessary condition is the provision of some kind of, within the regulations, occupationally safe and environmentally friendly alternative for those ships that cannot safely comply. A form of this alternative is being studied, and it could be things such as retention on board, as I have already mentioned, or discharge to a shore reception facility for testing and treatment ashore of the ballast water.

All of these possible alternatives and a number of others involving killing off the organisms directly within the ship's tanks are being studied and much research work remains to be done before a suitable regulatory alternative can be recommended. Moreover, pending the final results of the current monitoring program, it is still a bit premature to conclude that this at-sea exchange is the best primary method upon which to base a regulatory approach.

As no other country has ever attempted such a comprehensive approach to this problem in the past, it is not certain at this point just how effective this at-sea exchange approach is until we complete the scientific study. There are also certain legal impediments to the promulgation of such a regulation, but I will not take time to detail the. We do speak of them a bit in the paper. Suffice it to say we are actively working on this aspect and we are confident that the statutory definition problems here can be overcome and we are looking at the possibility, in concert with other statutory amendments being developed to implement a package of other pollution prevention and pollution protection measures arising from the recently concluded public review panel on tanker safety, that we can develop appropriate regulatory regime.

The coast guards in both Canada and the United States have been working very closely on these issues, are working on this problem actively and it is recognized that voluntary guidelines may not be 100% effective in preventing the discharge of suspect ballast into the Great Lakes. However, we have to caution that it is unlikely that regulation, without a massive increase in inspection and enforcement personnel, will ever be completely successful in eliminating the possibility of exotic organisms surviving in ship ballast water and the associated sediment which always remains in the bottom of the tank. Nor would 100% compliance, if attainable, completely eliminate the threat of new species arriving by other routes.

Previous speakers spoke about an 80-20 rule and should not seek perfection before we do anything. That would suggest, is similar to the kind of approach we have taken. We cannot wait to develop the public regulation; we must take action now and we have taken such action.

Canada is not alone in recognizing the threat that posed by the introduction of these exotic species, nor seeking to solve the problems of developing effective control programs. Australia introduced regulations early in 1990. It used its Quarantine Act in that case to control discharge from visiting ships of ballast water and the associated sediment, and the real concern in that case was sediment and water containing toxic dinoflagellates. This one of the organisms responsible for paralytic shellfish poisoning, the so-called red tide that gives rise to them.

In a highly unusual move, these regulations were withdrawn within weeks of their introduction and replaced with voluntary guidelines similar to Canada when the practical and safety difficulties of their regulations became apparent.

As I am sure you are already aware, in the United States the Aquatic Nuisance Prevention and Control Act of 1990 was enacted on 29 November of this past year. That act requires the US Coast Guard to issue voluntary guidelines within six months. These guidelines would control ballast water discharge from ships entering US Great Lakes ports, but it requires that these guidelines be replaced with regulations within two years of the enactment date.

The act also calls for collaboration between the US and Canada in the development and application of ballast water controls. In this respect, the US and Canadian coast guards have co-operated closely in the development of

current Canadian voluntary guidelines and it is likely that the US guidelines now under development are going to be integrated closely with the Canadian system for application during this coming season.

The two coast guards are also endeavouring to harmonize their programs of research and the programs to replace guidelines with mandatory controls; with regulations, in other words.

The Coast Guard recognizes the global nature of this ballast water problem and we have actively solicited, as well as the support from the US, the consideration within the international community and specifically through the United Nations specialized agency that deals with marine safety and pollution prevention matters, the International Maritime Organization.

Canada in fact has played a leading role in the development of a draft set of international ballast control guidelines and an associated resolution that would be, hopefully, approved by the International Maritime Organization. These documents are presently being reviewed internationally, as it is called, by the member states of the IMO, with a view to their adoption by the Maritime Environmental Protection Committee of the organization at its next session, which is coming up in July 1991. I expect that Mr Fleck will be in fact representing us again at those meetings.

The Coast Guard recognizes the seriousness of the ecological threat posed to the Great Lakes by the introduction of exotic organisms that are contained in ships' ballast water, and we recognize the importance to shipping as well as the continued economic wellbeing of the entire Great Lakes basin and the Canadian economy as a whole. We are ever conscious of the dual role we have within the Coast Guard of promoting marine safety and protecting the marine environment. We are confident that the ongoing initiatives of Canada and the US, and indeed now, thanks largely to the efforts here in Canada, the entire international maritime community, will now produce a practical, effective system of controls for the future that will protect the Great Lakes from ecological harm without prejudice to the continued safety and indeed economic viability of Great Lakes shipping.

If I can sum up, sir, the Coast Guard took immediate action, both domestically and internationally, to control the discharge of ships' ballast water upon being advised two years ago by the Great Lakes Fishery Commission of the suspected problem.

The shipping industry appears to have been highly cooperative in complying with the Coast Guard ballast water controls and has therefore greatly reduced the threat to the Great Lakes posed by the discharge of ballast water suspected of containing unwanted organisms. As I noted, records indicate that fully 97% of ships entering the Great Lakes in 1990 complied with the overall program requirements.

An ongoing study, as I noted, is under way under the auspices of the Coast Guard and the Department of Fisheries and Oceans, using the services of the University of Toronto, to assess the effectiveness of this at-sea ballast

water exchange program as an appropriate primary method of ballast water control.

We cannot wait for the perfect set of regulations to be developed and that is why we have immediately moved to put in the controls we have over the past two years, and we will continue to develop and refine that approach. As a result of these efforts, Canada is at the forefront of international action in this issue and will continue to work collaboratively with the US in the development of protective measures for the Great Lakes, and with the entire community of nations to develop international ballast water control measures.

While much has already been done, considerable research and development work, in particular, and assessment of options must still be done before an appropriate set of water control regulations can be enacted. Nevertheless, we do intend to proceed as quickly as possible, in concert with our American colleagues, and we expect to have a full program, including regulations, in place within two years. The Coast Guard is very, very actively involved in this issue and very concerned at the threat posed to the Great Lakes by the introduction of foreign species.

May I just conclude in noting again our interest in this matter and we express our appreciation for the interest and support of the government of Ontario and its agencies and departments in dealing with this important environmental protection issue and we look forward to continuing close co-operation with the government of Ontario. Thank you.

If there are any questions, I would be most happy to attempt to respond.

Mr Ramsay: Thank you very much for your presentation. It was very illuminating.

I just want to clarify that today we have voluntary controls and that as you continue to work with the US Coast Guard, because it has mandated by two years from now to have in place some mandatory controls, we have now made the determination that we will be on stream with it within two years to also have mandatory controls.

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Mr Turner: I would not phrase it that way, sir. I am not sure if the situation is not the contrary. In fact, we are considerably ahead of the Americans in this area because of the previous work we had already done. The fact that the American system has brought in legislation which requires them to adopt controls within a certain time period happens to fit fairly well with the work that both coast guards are doing in this area. I would phrase it rather that I do not see a particular difficulty for the Americans in instituting controls of that kind within two years, given the work that we are already doing and the schedule that we are on, because all ships coming into the American Great Lakes ports must go through Canada.

Mr Ramsay: What I want to know is, are we going to have mandatory regulations in two years?

Mr Turner: That is indeed our aim, as I have said in the paper, yes.

Mr Waters: You mentioned the exchange of sea water or ballast water, the fact that where they cannot do it, they do it in the St. Lawrence. Looking at what I can understand so

far about the zebra mussel issue, that would be just taking a potential where you would have two colonies now instead of one, because if you were to exchange the ballast water in the St. Lawrence, unless you contained that ballast water, checked it for any possible contamination and then released it or treated it appropriately, you would have bad ballast water there, infected. The inside of the hold or whatever where the ballast is kept would have residue of that on it. So they go on through the Seaway and maybe up to the Lakehead. By that time the new water would have a potential of being contaminated, would it not?

Mr Turner: As I noted in my comments, sir, the release of the ballast water in Montreal is certainly a last resort. The further down river you are, as you get into the tidal areas, of course, you also get into the salt water regime more as you down into the gulf. What we encourage is the release and exchange of ballast water as far down into the salt water area as possible because that is one of the factors effective in killing off any of the organisms therein. Releasing ballast water in Montreal is certainly a risk, but it is less of a risk than bringing that same ballast water up into the lakes if in fact they cannot hold it on board. The optimum certainly would be either to hold it on board or to pump it ashore into some form of treatment facility. Unfortunately, such facilities do not presently exist, either here or elsewhere.

Mr Waters: Also, is there any move towards enacting a similar law as the US has enacted, other than some guidelines that you have mentioned? Are we actually looking at enacting a law to reduce this?

Mr Turner: Our legislative system, sir, is somewhat different from that in the United States. In Canada, as I have noted in the presentation in our comments, we are working towards enacting law in the form of regulation, which is to the same effect. There are some statutory problems we have to address in so doing, which may in fact require statutory amendment. We are hoping, if that should prove necessary, and our legal advisers are looking at that issue, to do so by way of amendments which will be introduced coincident with other amendments we are currently developing to deal with other issues, safety and pollution prevention issues. But we do not need a separate law, a piece of statute in Canada, that is, in order to authorize us to develop regulation, because our statutory system is considerably different from the American.

Mr Waters: Finally, you talked about the federal government, and I know that you are doing some research into ballast water. Is there anything else the federal government is working on—funding, research programs or anything?

Mr Turner: There is some work being done in other departments, including certainly some co-ordination and liaison between the various organizations. Perhaps I could ask Tom Fleck to speak to that briefly, because he attends those meetings and he is intimately familiar with the type of work that is being done.

Mr Fleck: We do have plans for next year. We are constrained at the moment by funding. We have the \$250,000 ongoing program being done by the University of Toronto just now, but we have a further \$200,000 of

programs planned for the next fiscal year. We hope to work in conjunction with our US colleagues in determining which of the alternative procedures each one should take on board, rather than duplicating the research and development effort. So at this stage, although we have identified quite a few possible approaches, we still have to determine with our US colleagues what would be the most effective approaches to spend our limited R and D funds on.

Mr Waters: I just thought of something while you were answering that. The Coast Guard does all the buoying and all the navigation things. Are you finding that there is as yet much of a problem with maintenance from the mussels?

Mr Turner: We are starting to see zebra mussel colonies on our floating aids to navigation. Certainly this has been the potential to be a very expensive problem for us as well, no question. In fact, Captain McMinn sent me some photographs just a few months ago illustrating the depth and extent of zebra mussel growth on a couple of buoys that were picked up in—what area was it?—Peelee Passage quite extensive growth on the buoys. This is certainly going to be a problem for us as well.

Mr McLean: What is included in all the ballast water? What chemicals or what is it made out of?

Mr Turner: Ballast water is essentially water that is taken on through the sea intakes of the ship and, in other words, is composed of whatever is in the water at whatever port or whatever location they take on the ballast. The pump it into the internal tanks directly from whatever they are floating in. Thus, if a ship loads cargo to a certain level and takes on ballast at, for example, Southampton in the United Kingdom, it will have water from that area in its salt water in this case.

If a ship is partially loaded, or is fully loaded for that matter, and takes on ballast water, or is lightly loaded and takes on a greater quantity of ballast water in a freshwater port in Europe, for example, then that ballast water containing whatever organisms naturally occur right there in that area can be carried with the ship to wherever the ship is going. As the ship discharges the ballast water, whatever is in that water, if it is naturally growing in the area it came from, if it is contained in the tanks, if it survives the trip, may be pumped out, and if the environment is proper and adequate for it, may in fact grow in that area. That seems to be what has happened in this case.

Mr McLean: In your voluntary guidelines, you indicate that the intent of the guidelines is to let all ships heading for the St Lawrence Seaway and Great Lakes exchange their ballast water far enough from any coastline so that there are no problems, and you go on and say on page 3 that ballast water must only be discharged to shore reception facilities. What is the difference? You are telling them dump in the sea in one case and then you are saying that it has to be dumped in a reception facility in another case, and further on down the page you say that it must be disposed of only on land dump sites.

Mr Fleck: What we are dealing with in 4.4 is whether ballast water may contain an oily residue. Under the provisions of other regulations, oily residues may only be

pumped out to shore reception facilities. Very few ships could ballast oil tanks, but for those that may on occasion do so, they would have to pump those out to a shore reception facility. This is a provision of the Marpol convention as well, to which Canada will shortly accede.

Mr Turner: What that particular paragraph refers to are oily residues that may be in a tank. It has to be pumped to a shore reception facility because that is what the law requires.

Mr McLean: I was wondering about all the waste food and all that. Where would that go, into a shore reception facility?

Mr Turner: Again, sir, that is an area in which there are some difficulties domestically and internationally. Again, Mr Fleck is the one who is carrying the spear for us in the Coast Guard on that issue too in dealing with our colleagues in the other federal departments and in the provincial governments.

Mr Fleck: Usually the problem arises with tankers, and most tankers go into oil company terminals. These terminals are equipped with shore reception facilities to accept the oily wastes. It is generally not a problem for ships coming into the lakes, because not too many tankers come into the lakes.

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Mr Turner: Did I understand though, that you were asking about ship's garbage and that kind of material as well?

Mr McLean: Food waste, that type of thing.

Mr Fleck: Food waste, if it is coming in an overseas ship, is required to be incinerated. Most of the larger ports have incineration facilities. The Department of Agriculture and various other government departments are currently looking at possible alternatives to incineration for those smaller ports that do not currently have these facilities.

Mr McLean: Is the reason for your guidelines because of the zebra mussel infestation?

Mr Fleck: Not initially. The European river ruffe was the initial cause of concern that was raised by the Great Lakes Fishery Commission. The zebra mussel came along later, but I think it eclipsed the problem of the river ruffe.

Mr Turner: The purpose of the guidelines is simply to prevent, to the extent practical and possible without compromising safety, the introduction of any further species other than those we have been made aware of.

Mr Ruprecht: As a supplementary to Mr Waters and Mr McLean, I was not quite sure whether you said that the ballast water, once it has been expelled, is being treated in some cases, in most cases or in none of the cases.

Mr Turner: Normal ships' ballast water for cargo ships, no, it is not treated. There are no provisions or facilities to allow the treatment of such large quantities of water. It is normally simply pumped through the hull of the ship and released back into the water. In other words, when a ship takes on ballast, it takes it in through the sea valves underneath the water into the special tanks for that purpose,

bolts there during the duration of the voyage. When it releases ballast, it simply discharges it back out to sea.

Mr Ruprecht: At will, at any time that can be done?

Mr Turner: At any time that needs to be done.

Mr Ruprecht: While the vehicle is in the process of floating.

Mr Turner: That is right. In fact, it can be done while the ship is in motion. That is the normal thing that would happen in terms of at-sea exchange: pump out a tank, as we request them to do now, and refill it with water from wherever they happen to be sailing through at the time.

Mr Ruprecht: If a ship was infested by zebra mussels, as apparently was the case when the first ship came over from Europe to dump a discharge load into the Great Lakes, if they found zebra mussels in the holding tanks or ballast tanks, would they then not be forced to treat it once they discovered the zebra mussels on board?

Mr Turner: No, sir. First, there is no way to find such organisms easily. In the vast majority of ships, simply to enter the ballast tanks to, for example, take a sample, as we have been doing over this past year in this research program, is quite a task. You do not normally have access to these tanks within the ship. They are down in the bowels of the ship, so to speak. They take water in directly from the sea through the side of the ship, discharge it back the same way through pumping systems, and you do not normally have easy access to the tanks at all.

Second, the kinds of things we are talking about being introduced here—for example, this particular one that has raised so much concern, zebra mussels—as you will be aware, I am sure, from research in this matter that you have no doubt done, and the previous speakers, its larval stage is literally microscopic. You would not be able to tell even if you could look at the water in the tank. It is not as if you see these big fish swimming around in the tank. There would be no way, even if the ship did have access to all its ballast tanks, to somehow verify whether or not there were some kind of foreign species in there. It is very difficult for a ship that is crossing the ocean, for example, to know whether there is some organism or another that is hitching a ride, so to speak.

There is the additional problem that as ships take on ballast water very frequently in ports where the water is quite shallow and the intakes may be quite near the bottom, they normally tend to suck in a bit of mud and dirt and, of course, whatever sediment is floating in the water at the same time they take on the ballast. Over a period of years you end up with a buildup of sludge and mud in the bottom of these tanks.

It would appear from what limited research has so far been done that this in itself can in fact provide an environment for some of these species to survive. So there is no easy way for a ship to know what kind of organism, if any, might in fact be finding its way into its ballast tanks. Indeed, until a couple of years ago, nobody in the international shipping community even gave this a thought. It was not noted or seen as a problem until this kind of thing started to emerge.

There is one theory, and I must say we have no direct evidence of this, but there is at least one theory that some of these species are now finding their way into ballast water tanks and being imported in this way because the areas in which they were picked up have been cleaned up in themselves. Many of these European ports were environmentally rather unfriendly places for a good many years and not much survived in the water.

Now, as Europe has become so much more environmentally conscious, ironically enough the water has been cleaned up to the point where many of these species more easily survive in it and therefore are more likely to be picked up by these ships' ballast intakes. That is only a theory, but there is a certain irony there that environmental protection improvements in certain parts of the world may in fact have added to our problems here.

Mr Ruprecht: Has there been an improvement over the last few years in that you detect less of a problem with the exchange of ballast and the throwing out of garbage?

Mr Turner: With regard to the exchange of ballast, until we started this process a couple of years ago, there was none. No one in the world did this kind of thing in the past until this issue arose a couple of years ago. Ourselves and the Australians began to become very concerned about this at about the same time. Up until that point, as I said, this was literally a non-issue, a non-problem. No one had bothered exchanging ballast at sea. There was no point in it. Why would anyone do that? It never occurred to anyone that these kinds of things could be happening. So I cannot say that there is less of a problem now. It is only within the last couple of years, and we have only had this program, as a result, in the last couple of years.

With regard to the other aspect of whether shipping and ships are environmentally more conscious, I think that is quite true. Worldwide we have certainly turned towards greater environmental sensitivity among the shipping companies and the shipping industries and through the International Maritime Organization, which I mentioned, and the United Nations. Its motto in fact is "Safer Ships and Cleaner Oceans," and it takes very seriously the environmental protection aspect of it.

There are conventions and particularly one major convention called Marpol for shorthand, which is a major international convention regulating and governing discharge of oils and chemicals and contaminants of different kinds and garbage and so on from ships. It has been very successful, along with the laws of various coastal states such as Canada, in preventing pollution from ships.

When it comes to oil pollution, for example, which is certainly the area which has received the greatest attention over the last two decades, Canada was one of the foremost countries in terms of enacting very, very strict regulations. We have had for a good number of years what was referred to as a zero discharge regime, in which you were not allowed to discharge any oil at all, which, technically speaking, is simply not feasible. There are always a few molecules get off the ship somewhere on shore, but that was the law in Canada. The nations of the world are now moving towards a more uniform regime under these international

conventions, under which all ships are being more uniformly regulated to ensure very, very low levels of discharge of any kind of contaminants or oil products at that, where this happens, it happens well away from coastal areas.

The processes that are now in place and are being required in terms of the construction and equipment on board ships now to ensure that particularly oil and chemicals are not discharged into the water in any quantity have meant that more and more of the ships clean their tanks with special equipment at sea, gather any residue waste products into special holding facilities and pump that small amount that is left into special shore treatment facilities, some of which we have here in Canada. You are simply not allowed to dispose of that stuff over the side of your ship once used to be able to years ago.

I apologize for the length of the answer, but, yes, shipping is essentially considerably more environmentally conscious now than it was, say, a generation ago.

The Chair: We have exceeded our time. I will allow two brief questions from Mr Klopp and Mr Ramsay.

Mr Klopp: On the Great Lakes themselves, and this in general with regard to the whole system of stuff being dumped over the sides of boats, how many boats are, say, in Lake Huron, Lake Erie, etc., following boats along, you will, just to keep the honest honest?

Mr Turner: We do not make a practice of following boat along, as you put it. We do have other methods of use, though, including some aerial surveillance that is carried out, and through the provisions of the Great Lakes water quality agreement with the United States there are some provisions in place as well. We operate an aircraft, a good part of the time of which is used for pollution surveillance over the Great Lakes. It is not practical to follow every ship, of course, as you will appreciate, but there are some measures in place.

Mr Ramsay: I just want to get clarification. I am looking at your amendment 2 to your guidelines, dated April 1990. On 6.2 it says, "Evidence of non-compliance may lead to the application of regulatory controls." I was just wondering when and by whom the determination was made that within two years we would make our controls mandatory.

Mr Turner: I think in terms of the when and by whom, it is done within the organization of the Coast Guard, which is part of the Department of Transport, and has involved consultation with our political masters, with our minister and his staff. Based upon the best technical advice we have from our experts within the organization, people such as Mr Fleck here, we have made the determination within the organization that that is what we can do and then we can do it.

Mr Ramsay: Including the political determination. So this is going to be your advice to the minister?

Mr Turner: Yes, certainly. We would advise the minister as to what it is practical to do and in what kind of time frame it is practical to do it, what the impacts and implications of doing it one way or another would be.

Mr Ramsay: So that advice is on its way at some time to the minister. His decision has not been made yet.

Mr Turner: There have been ongoing discussions on this.

Mr Ramsay: It is being considered at this time.

The Chair: Thank you for your presentation. We will stand in recess now until 1:30 sharp. I will remind the committee members that we intend to start at 1:30 on the dot, so please be here at 1:30. Thank you very much.

The committee recessed at 1214.

AFTERNOON SITTING

The committee resumed at 1333 in room 228.

MUNICIPAL ENGINEERS ASSOCIATION

The Chair: The next scheduled witnesses are the Municipal Engineers Association. The association will identify concerns relating to the impact of zebra mussels upon municipal water filtration and storm water sewage treatment operations. I ask them to come forward. I believe appearing are Lloyd Murray, D. R. Morrier and M. Holenski. You may proceed.

Mr Holenski: I will make the presentation and I presume all members of the committee have copies of our brief. Perhaps just as a little bit of an introduction, the Municipal Engineers Association comprises some 500 professional engineers who are in the employ of approximately 150 municipalities in the province of Ontario. We have involvement with the gamut of all municipal services.

The Chair: Excuse me. Would you identify yourselves, please?

Mr Holenski: I am Mel Holenski. This is Lloyd Murray, technical support manager with the regional municipality of Durham, and Don Morrier is the director of plant operations for the regional municipality of Halton. My specific situation is that I am deputy director of engineering with the regional municipality of Niagara.

The Chair: Thank you very much. It makes it easier for the people who are transcribing this.

Mr Holenski: The association is pleased to have this opportunity to make this submission to this committee on what we certainly consider is a very serious problem. Obviously all municipalities that have a responsibility for potable water, both the treatment and the delivery, are now experiencing or will be experiencing a problem with zebra mussel infestation.

The greatest impact is in southern Ontario and on those municipalities that take their raw water directly from the waters I have identified, which are Lake Ontario, Lake Erie, Lake St Clair and Lake Huron. I had occasion to note a recent article which indicated that zebra mussels have now been found at the west end of Lake Superior in Duluth, so the spread is continuing.

The brief has been prepared on the basis that as far as dealing with the zebra mussels is concerned, you will undoubtedly have experts who will provide you with that information. What we would like to do is address the direct impact to municipalities.

The mussels have a high rate of propagation and they select their site—I use the word “colonization”—on the basis that there is continuing water flow and that the waters contain nutrients which will enable them to secure their food supplies, as we understand, by straining it from the water. The zebra mussels are transported in the veliger state by water flows and also they have internal ability to move about to select the point of attachment. The attachment points are generally hard surfaces and obviously our facilities are certainly an appropriate home for them because we have both of those conditions.

In a particularly hospitable water climate, that is, temperature, water flow and nutrients, not only do they attach themselves to hard surfaces such as the interior of a pipeline, but apparently will also attach themselves on top of previous layers of zebra mussels. The cumulative effect of this is that there would be an accumulation of zebra mussels over a period of time. This would then constrict water opening in the pipeline with obvious adverse impacts on the capacity of the pipeline. I am sure you have had the representations from Ontario Hydro and it has similar concerns.

In the potable water field, the municipalities not only have concerns about our external piping which brings the raw water to the plant, but also their possible intrusion into the treatment facilities and the congestion and constriction of various piping, valves, etc. Undoubtedly, if their growth were unrestricted, then we would even see impact within the treatment process in the plants, settling beds and so forth.

Many municipalities have now initiated projects to protect intakes and treatment facilities by the placement of pre-chlorination facilities at intakes. It has been the practice in the past that we have pre-chlorination for treating water directly in the plants. These are now going to be relocated. The chlorine that is introduced into the water flow is definitely known to destroy the veligers. This then provides protection for both the raw water pipeline and the internal components of the treatment plants.

The unfortunate downside of this is that in carrying out such installations we are incurring significant capital costs for these installations and obviously higher operating costs for this. This will also necessitate a regular inspection of these chlorine facilities to ensure that these are not damaged and would not create a possible problem to marine life if chlorine were allowed to escape at the point of damage.

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The intake structures, commonly referred to as cribs for these raw water intakes cannot at this point in time be protected since the environmental authorities, and specifically the Ministry of the Environment, will not permit the discharge of chlorine directly into the body of water, since this would have a potential adverse impact on other marine life. So this is an area that remains unprotected, and unless research is successful in developing a specific action plan as to how these can be either eliminated or significantly reduced, then we are going to have an ongoing cost for carrying out a continued inspection program. Obviously once you have identified that there is a major accumulation of these zebra mussels which are restricting flows, then the municipality will have to obtain the services of divers to undertake the removal of the adult zebra mussels from the structures.

There is a further indirect impact on water treatment plant operations. It would appear that the zebra mussels have been successful in cleansing some of the pollutants within our existing surface waters, and this is notable adjacent to shorelines. This in turn would appear to permit

reater penetration by sunlight, and as a consequence we are now seeing some increase in algae blooms. Just for the information of the committee, algae blooms do constitute a source of taste and odour problems with raw water potable supply. So although the quality of the water may be slightly improved, it does have an adverse impact. The other thing we do not have any experience with is that as adult zebra mussels die off, whether in that process they may also contribute to certain taste and odour problems to the raw water.

Municipalities also have concerns with regard to other pipelines, and these are sanitary effluent from pollution control plants and also storm water outfalls; again the same type of problem, and that is the basic buildup of mussels within the interior of the pipeline and its subsequent constriction, which would reduce hydraulic capability. This then would again reopen the requirement for inspections and the ultimate removal by descaling by divers.

Where we have a relatively small pipeline diameter, then you cannot have a diver enter into this, and over a period of time, if there is enough of an accumulation, probably the only approach to freeing that would in essence be the total replacement of that pipeline. There is obviously very limited experience, but this is a projection in our part.

The discharge of treated effluent from large treatment plants of recent design has been accomplished by distributing the points of discharge to ensure appropriate dilution. Again municipalities have concerns that these individual ports, because of their relatively small openings, could be clogged by the development of zebra mussels and then require attention.

Going on to the issue of capital costs for remedial action, I have cited in this brief the experience of the regional municipality of Niagara. We have a number of water treatment plants and we have incurred to date approximately 500,000 for the relocation of pre-chlorination facilities. We have been fortunate in that most of these intakes are relatively short. As an example, we take water from the Welland ship canal, so our installations have really been on and as opposed to perhaps a long pipeline. The gentlemen with me have indicated that they have some intakes that may go out 2,500 feet into the lake. Obviously the chlorination facilities have to feed out that far, and then obviously you have more inspection to ensure that those remain intact during operation.

Just as a further note, again the region of Niagara experience, to get a diver to carry out an inspection you are looking at about \$1,500. In the case of the St Lawrence Seaway Authority, the Seaway had a rather unfortunate experience where several divers were killed on a construction site. The Seaway has now instituted some further requirements as a consequence of that, and this is over and above that. They are in effect requiring certain liability indemnification and so forth, so that figure of \$1,500 in those situations does not represent our total cost.

Private industry is not immune to zebra mussel problems. Where an industry takes raw water from a receiving stream that is now infested or makes discharges to that receiving stream, then the same problem will be experienced.

I just had Lloyd Murray draw to my attention a problem they are experiencing in dealing with several industries that take raw water, and we have the same experience in our region. One of the approaches to dealing with this would be to do pre-chlorination. Since the industries return that raw water directly to the receiving stream, if we have introduced chlorine, the question is, are we now going to be required or are the industries going to be required to undertake a dechlorination of that water supply, which obviously is going to add to the complication and to the expense?

Right now it is just the raw water supply, and their concern is that they want to be able to get that water in the quantities and without any problems through their piping process. This is the kind of dimension we are dealing with and I guess new problems are cropping up every day.

It is therefore imperative that there be a significantly expanded research program undertaken under the auspices of provincial and federal authorities to develop a system or systems whereby these pests can be eradicated without creating environmental damage. Individual municipalities, particularly those of smaller size, just do not have the financial capability to undertake basic research. It is even unfortunate that municipalities are individually developing their own protective arrangements for coping with zebra mussels. We have reason to believe that we are carrying out a duplication of effort in having consultants reinvent the wheel every time somebody retains them. This is the sort of thing that has been the start of this problem. Therefore, all municipalities would benefit from a circulation of information which details the most economical and effective methods dealing with pipeline incrustations.

In summary, from a municipal perspective, a major environmental problem has developed in the Great Lakes water system which we believe, as far as the system is concerned, is the direct responsibility of the federal and provincial governments. Municipalities believe there should be a co-ordination of effort by these two senior levels in the following four areas:

First, obviously there should be adequate funding into research for the most environmentally acceptable and economical ways of dealing with this intruder.

Second, there should be a central source of current data on progress being made by private industry and all three levels of government, and that this information should be disseminated and hopefully would reduce duplication of effort and expenses.

Third, there should be an expedition of the approval process to permit interim solutions to be implemented as quickly as possible. This would require at the provincial level designation of a lead ministry that would have the authority to cut red tape. You have to understand that in carrying out any of these facilities, we have to apply to the Ministry of the Environment for certificates of approval. Then the fisheries enter into it. Then we have the Ministry of Natural Resources with certain concerns. If there is a delay, then these things drag out and it just slows the process down and the costs keep escalating.

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The last point that we obviously would want to make quite strongly is the provision of financial assistance to municipalities in undertaking these capital works which are necessary to protect essential utilities from the zebra mussels, which are in effect degrading our ability to carry out our mandate.

That, Mr Chairman, is the presentation on that. We would be pleased to respond to any questions that you or your committee may have.

Mr Waters: When you are looking at your intakes, you talked quite extensively about chlorination. I did not hear any discussion about twinning or anything like that. Are you looking solely at this point at just introducing chlorine at the end of your intake pipe or are you looking at any other alternatives to it?

Mr Holenski: You have to understand that up to the present time, without zebra mussels, there was chlorine being used at the front end of the treatment process. As an immediate solution, and not necessarily the final one or the most appropriate one, it was in our opinion relatively straightforward that you bring that pre-chlorination internally, within the plant, to the head of the pipeline. That at least provides that protection. What it does not protect is that structure right at the external part of the pipe.

Mr Waters: What type of apparatus have you put in place so there is not a spill, a chlorine spill, into the lake? I have worked around mechanics enough to know that for everything you introduce there is always some hazard or some potential breakdown.

Mr Holenski: The rate of pre-chlorination is something that is controlled by equipment and meets with current Ministry of Environment requirements as far as that installation. The only problem that we would visualize at this point in time would be that if you had a break in the line carrying the chlorine to the point of where it is going to be injected, then it might escape to the free waters, but other than that we do not see that there is a problem. I think that viewpoint is shared by the Ministry of the Environment.

Mr Waters: I thought the lines were inside the pipe going out. I did not realize that they are on the external part of the pipe.

Mr Holenski: It will depend to a large extent as to what size of pipe. If you have a small plant and all they have is a 12-inch pipeline, you may not necessarily be able to introduce it all the way. You may be able to feed it in; you may not. With large raw-water intakes, there certainly is a potential that we can run it directly inside. It requires onsite engineering to deal with that.

Mr Waters: How often are these lines inspected? I have worked a bit with chlorine in the water system. I know we have never found anything that could take the heat, especially if the lines are external on the pipe going out.

Mr Holenski: I would have to think that this would be something that will be subject to conditions which the Ministry of the Environment will impose within the certificate of approval.

Mr McLean: I think mine was on the same line what Mr Waters was questioning about. The environmental authorities will not permit the discharge of chlorine directly into the body of water, as indicated in your brief. Today you are not treating it as it comes in? It is not at the intake?

Mr Holenski: Not at what I would refer to as the crib structure, that is, external to the pipeline. You cannot do anything with that.

Mr McLean: But is that not where all the zebra mussels are going through first?

Mr Holenski: Yes, but you have to understand that the zebra mussels will also enter the pipeline and attach themselves and would carry on through. What we are saying is that in just doing up the pre-chlorination, we still have a component of our system that does not receive any protection, which is the crib structure.

Mr McLean: Why could you not run that line out to treat it at the end?

Mr Holenski: I really have to refer you to the Ministry of the Environment and perhaps even the Ministry of Natural Resources as to the concerns they have about chlorine being introduced at that point, which then may have an impact on marine life. I think that is their concern.

Mr McLean: I think this a very important issue, because every municipality that takes water from the lake has a major problem. What dealings has your municipality association had with the ministries to put the line out to the end for treatment?

Mr Holenski: You have to bear in mind that this is something that is of recent development. We have been individually involved in discussions with the approving authority, namely the Ministry of the Environment, as it relates to any such installations. Each one is being dealt with on its merits. The concern we have is that there is a fair amount of duplication and there is some groping around as to what is the most appropriate way of coping with this.

Ms Churley: I just wanted to ask you a question about the approval process. You mentioned the Ministry of the Environment, and there are two other ministries that get in on the act, Natural Resources and who else did you say?

Mr Holenski: Fisheries.

Ms Churley: I just wanted a bit more information about the red tape that you were talking about. Who would you propose as a solution to that?

Mr Holenski: I guess very simplistically, we would like to see the ministries get together and agree that this is the requirement that we will have municipalities conform with, as opposed to our having to run from one to the other as a problem crops up and you have to go to yet another authority to get it resolved. Those things take time. Sometimes, depending on the statistics that you are dealing with, there may be different interpretations. I think what we are looking for is that these are the kinds of things that have to be addressed internally. While I would like to propose solutions, I am afraid I do not have those either.

Ms Churley: I just wanted to be clear. You are saying that the MOE is now in fact the lead ministry and that what you would like to see is that a ministry be the lead and take control over the process?

Mr Holenski: What we are hearing at our end is that perhaps the Ministry of Natural Resources is the lead agency. We know that certainly the Ministry of the Environment has a very significant role in this. I guess we are just trying to clarify this point and have somebody speak clearly with one voice on behalf of the province that will effect ensure that these things are processed in an appropriate length of time.

Ms Churley: I just had one other question on page 2. It is almost more of a comment. You seem to be saying that zebra mussels are successful in cleaning some of our pollutants up, but on the other hand the very cleansing of our waters is creating other problems by natural plants growing. Do you not find that a little bit of an irony?

Mr Holenski: It is an irony, but it is a fact of life that we do have pollutants in our waters. Without the zebra mussels we had a balance. That balance is being shifted a little bit now.

Ms Churley: But in the overall scheme of things, you could not consider that a serious problem? I just found it interesting that you pointed it out.

Mr Holenski: I have to field complaints from residents who are utilizing, as an example, the Fort Erie potable water supply. In the summertime, when they get taste and odour, they are very unhappy. If that is going to increase, it is just another dimension to it.

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Mr Ramsay: In regard to these pre-chlorination systems that are installed on the water intake pipes, those that are installed with external chlorine feed lines to the end of the intake or wherever that is injected, are they not equipped with some sort of an alarm system so that a plant operator would know that some breakage has taken place so that this could be shut down, or are there automatic shutdowns if the amount exceeds a certain flow?

Mr Holenski: I think if you had a rupture in the feed line, I do not know that it would necessarily show up. Obviously, if in some way it was escaping at a greater rate—but the control is really at the plant. In other words, the mechanisms that are feeding that, that is where the control is. But if there were an escape from the feed line itself, if it is within the raw-water intake pipe, you have just shortened up the point at which you are introducing it, but it does not create a hazard. If it is external, yes, ultimately it could create some problem, but I do not know of an alarm of any sort. I do not know whether these two gentlemen would care to comment on that.

Mr Ramsay: Would that not be a good idea, for an external?

Mr Holenski: To be quite honest, I do not think that you would receive any benefit out of that.

Mr Ramsay: How would you know to shut it off?

Mr Holenski: I think the only way you can really deal with it would be to try to make an inspection of the line. If

it is external, you try to bury it. Obviously, if you saw that it was exposed physically and also any, let's say, escape of chlorine, some sampling of the water would also reveal that as well. Those are the kinds of tests you would have to perform.

Mr Ramsay: What would be a typical material used to install, say, the flow of chlorine to the end of the intake on an external line? What type of piping would be used?

Mr Holenski: Common plastic tubing, in all probability, at this point.

Mr Murray: We are proposing using polyethylene, but it would be internal.

Mr Ramsay: And all the controls are inside the plant. Typically, are a lot of these pumps in a continuous pumping mode or do they shut down for certain periods? Is there any sort of backwash of water that happens in a pipe, say, that might have been only treated at the end?

Mr Holenski: Maybe I could start it off by saying that the problem of having zebra mussels attach themselves to pipelines occurs when you have water temperatures that reach a certain point, and I guess there is a period in which they grow. At that point in time, presumably you should have something fairly constant. As for pre-chlorination just for purposes of water treatment, that would be selective. If the water quality is bad and the pre-chlorination assists in the treatment process, then normally you would do that, so in essence we are incurring perhaps some additional cost that under other circumstances we would not have. I do not know whether I have made myself clear. I will ask these fellows to add to that.

Mr Ramsay: Actually, what I was asking was that if you are injecting chlorine somewhere near the end of the intake pipe, that is fine as long as the pump is continuous and the flow is into the plant; what happens if you have that constant injection of chlorine and then the pump is turned off? What happens to the water? Does it just stay in the input valves? Does the water stay in?

Mr Holenski: The chemical feed would stop as well. If you are no longer taking water in, there would be no reason why the chemical feed would be continuing.

Mr Ramsay: But all the water in the pipe would have been treated.

Mr Murray: It would just remain there and be treated. It would be enclosed and would not escape out into the body of water. In fact, earlier, the question with regard to disinfecting the crib itself, that in fact is one of the reasons why they do not bring the chlorine right up into the crib. They bring it into the end of the pipe so the chlorine will not get into the lake body itself and get transmitted.

Mr Ruprecht: My first question was actually already asked by Ms Churley, but just a supplementary on the amounts of chlorine you use to treat your water; what are the amounts that you use?

Mr Holenski: To be quite honest, I could not personally respond to that. I do not know whether my colleagues could.

Mr Murray: In our area, taking water from Lake Ontario, we typically add in the order of two parts per million.

With zebra mussels it will likely be a little higher than that. It has been suggested there may be times when you have to go up to five parts per million, depending on various water quality conditions.

Mr Ruprecht: Depending on what? What would that depend on that you go from 2.5 to 5, let's say?

Mr Murray: If there were a lot of zebra mussels there, they would have a certain chlorine demand. If there are higher levels of ammonia in the water, that has a significant impact.

Mr Ruprecht: I do not wish to put you on the spot, but would you think most municipal systems would be in the same position to use the same kinds of amounts that you would?

Mr Murray: I would say on Lake Ontario they would for the most part be very similar. Sometimes certain municipalities have longer intakes and they are a little further away from things that may affect the ammonia concentration and thereby you could get away with adding a little less. In inland waters where there are rivers and so on, it is going to be somewhat dependent on the water quality in that area.

I might mention, earlier it was stated that some of the intakes are out 2,500 feet long. In the region of Durham, where I am from, we have one out 5,500 feet long and most of ours are all over 2,000 feet. We have seven in Lake Ontario. Our costs are going to be in the order of \$1 million.

Mr McLean: Where do the dead ones go that you kill in that district?

Mr Murray: Again, they have not hit us yet. But the whole intent of adding chlorine is to kill the larva or veliger in its initial growth phase so that in fact there is not a zebra mussel growing up to an adult form, because once they form, then it is a real problem.

The Chair: Thank you very much for a very candid and informative presentation to the committee. Is there any specific direction or recommendation you would like to leave with the committee?

Mr Holenski: I would think that the four points on the last page of our brief are the key ones. We tried to summarize them on that basis. Certainly our elected representatives have great concerns about the capital costs we are incurring. I do not think you require any sermon from me on that aspect, but we are all hurting and these are just additional costs that we just have not had to face before. In some instances we do not know. In my case, I have indicated Niagara, it is in excess of \$500,000. Here is a situation where somebody is saying over \$1 million. Multiply it by all the municipalities and you will get an overall picture as to what capital costs are going to be incurred, as well as the operating costs. That is certainly a major concern to us.

ONTARIO MARINA OPERATORS ASSOCIATION

The Chair: The next witness to appear before the committee is the Ontario Marina Operators Association. The marina operators will focus their presentation on the association's willingness to assist in the area of public education. Presenting on behalf of the association are Bruce

Mackenzie, vice-president, and Michael Shaw, executive director. I would ask you to identify yourselves for Hansard and then proceed with your presentation.

Mr Mackenzie: I am Bruce Mackenzie and this is Michael Shaw, the executive director of the Ontario Marina Operators Association.

It is a welcome opportunity for the OMOA to be able to present to you the association's concern and recommendations with regard to the invasion of Ontario's waterways by the zebra mussel. The OMOA represents approximately 400 of the 700 marinas in Ontario. Many of these marinas are already faced with having to deal with the zebra mussel. All of our marina operator members are concerned with how the zebra mussel may affect our waterways and that influence they will have on the marine industry in the future for water-based recreation and tourism in Ontario.

The OMOA certainly has a responsibility to its members to present the strongest of all possible cases to convince the governments of this province and this country not to underestimate the threat posed to our waterways by the zebra mussel.

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The OMOA also feels a tremendous responsibility to the half of the citizens of Ontario who go boating every year, to the owners of 1.3 million boats in Ontario, to our customers who are commercial and sports fishermen, and to the 25 million citizens of the Great Lakes communities who depend on water processed through municipal filtration plants. The preceding are just some of the user groups that will be affected by zebra mussel infestation.

We all have a responsibility to the citizens of today and the citizens of tomorrow to do whatever is possible to reduce the effects of the zebra mussel. The zebra mussel is not going to go away; it is here to stay. It is evident that this form of biological pollution is in some ways far worse than other types of pollution. Oil spills can be cleaned up, chemicals can stop being introduced, but the mussel is here to stay, and despite warnings, there was not a thing done to prevent it. We seem to just idly sit back and watch to see what is being added to the Great Lakes and observe their further degradation.

The zebra mussel is just one of nearly 100 species that have been introduced into the Great Lakes as a result of human activity over the last 200 years. Almost all could have been prevented, and we have no guarantee that the next disaster is not in a ship now bound for an Ontario port. The zebra mussel may have the most impact of all of the introduced species so far, but there is a chance that the next introduction could even be worse.

Ontario is the sole province of Canada on the Great Lakes, compared to eight states of the United States. This province's responsibility to the Great Lakes and to the citizens who depend on them is tremendous. It is difficult to put a dollar figure on just how important the Great Lakes are to the prosperity of this province, but it is easy to see that if it were not for the Great Lakes, Ontario would not be the industrial heartland of Canada and we would not enjoy the quality of life we have. Our water, our

transportation, hydro production, our fishing, our recreation, are all dependent on the Great Lakes.

The boating and marine industry is totally dependent as well on the incredible waterways of Ontario. The fast-growing service industry cannot afford to allow any stone to go unturned in its attempt to reduce the effects of the zebra mussel. This industry is not small. It is worth \$1.8 billion to the economy of Ontario. Of the 1.3 million boats in Ontario, more than 60% have access to Lake Erie, Lake Ontario and the St Lawrence River, the waters now infested by the zebra mussel.

In 1987 alone there were 14.6 million angler days in the Canadian portions of the Great Lakes, injecting a further \$350 million into Ontario's economy. This last figure does not include the value of recreational fishing in Ontario's inland waterways.

The 700 marinas in Ontario support approximately 10,000 wet mooring spaces or year-round dry storage spaces for boats. The marinas and numerous yacht clubs are the gateways to Ontario's waterways. It is essential that marinas be able to maintain themselves and their related services so the public can continue to have the excellent access to the waters of Ontario that it enjoys today.

If the waters and other related resources such as beaches become less attractive to the public because of zebra mussels, then there may be less use of the water and will become more difficult for marinas to continue services and remain profitable. The same can be said of commercial and sports fishing. In Lake Erie, for example, 50% of marina customers are there because of the fishery. If this fishery is adversely affected by the mussel and fishing decreases, there would be serious economic consequences for the marinas on Lake Erie. Numerous marinas in Ontario's inland waters exist solely to service the sports fishing industry. What impact will the zebra mussel have here?

Marina operators are already experiencing direct costs because of the zebra mussel. Many are facing significant costs in maintaining docks and other related facilities. Some operators will soon face the cost of providing new services to adjust for possible changes in boating because of the mussel. Dry stacking of medium and small power boats may become necessary. New boat lifting equipment may need to be purchased to lift boats for storage and more frequent cleaning. Marinas are now being encouraged to look at establishing areas where boats can be cleaned of mussels away from the water. The OMOA is working on developing a model zebra mussel control station. The development of control stations such as this will create additional costs.

Further costs will be experienced if there is a loss of business from residential boaters, commercial fishermen, sports fishermen and loss of tourist business. Communities on the water such as Parry Sound, Brockville and Little Current can ill afford a drop in tourism, and neither can the marinas that serve as the front doors for such tourism-dependent locations.

Attention must be drawn to the need to protect the tremendous investment that the three levels of government have made in municipal waterfront developments, in addition

to the even bigger investment made by privately owned marinas. Communities like Orillia, Kingston and North Bay, as examples, have made significant investments in making their waterfronts attractive boating centres and people places generally.

The province of Ontario has been a major partner in many of these projects. The federal government's small craft harbour office has made huge investments in public and private developments in the last two decades, especially in the Great Lakes, such as in Port Dover, Sault Ste Marie and Stoney Creek. Many of the members of the OMOA represent the municipally owned marinas that have been established as a result of the investments of public funds.

Boat owners may experience some costs as a result of the mussel. These costs will be a result of a need for more frequent cleaning, more antifouling and/or bottom wax use, the installation of high engine temperature alarms, and possibly added mechanical work. Some boaters may change the way they use their boats by either dry stacking them at a marina or purchasing a trailer to serve as a regular boat storage base. Both of these strategies permit a boat to remain out of the water when not in use and thus free of contact with the mussel.

Fortunately, a recreational boat is easily handled at full-service marinas, and zebra mussels can be cleaned off without high technology. Some boaters may experience no extra costs as a result of the mussels, but boats that remain in the water for an extended period of time in heavily infested waters may need more frequent cleaning, depending upon the amount of use.

Marina operators feel that boaters will not be discouraged from boating because of the direct effect of the mussels on their boats, for this can be corrected. Rather, boating activity may well be expected to decrease overall because of the effect of the mussel on the aquatic environment that boaters enjoy today.

Marinas are going to play a very important role in the war against zebra mussels. From a communication and service point of view, marinas are the natural vehicles for disseminating information and educating the boaters of Ontario. The OMOA looks forward to working with the Ontario government to help reduce the effects of the zebra mussels. Marina operators cannot afford to lose some of their customer base because of the zebra mussel, just as Ontario, its industries and citizens cannot afford not to act as quickly as possible to reduce the effects of the zebra mussel.

In Ontario today we have the contaminated waters of the Great Lakes and the relatively uncontaminated waters of our inland waterways. At least, as of 1 December 1990, no zebra mussels had been sighted in inland waters in Ontario. The OMOA supports the initiatives of the Ministry of Natural Resources and the Ministry of the Environment to learn how to manage and cope with the mussels in the Great Lakes and their attempts to keep the mussels from gaining access to inland waters not directly connected to the Great Lakes.

The OMOA wishes to propose the following strategies for dealing with the zebra mussel:

1. Continued research into the biology of the zebra mussel;
2. Continued and expanded research to determine ways of preventing the spread of zebra mussels;
3. Enact legislation restricting the movement of contaminated water, eg. in bait wells with bait fish, and other carriers of mussels and/or their larvae from infested waters into uninfested waters;
4. Public education and education of user groups;
5. Signage at all boat ramps in Ontario;
6. Assist in the establishment of zebra mussel control stations at boat ramps in Ontario that require them;
7. Set up mussel-free zones in the province to encourage the involvement of local groups and citizens, eg. cottage associations, tourist associations;
8. Border inspections and information, highway information signs;
9. Boat inspections at truck weigh stations;
10. Create higher awareness among the public; have displays and demonstrations, have creel census staff inspect for zebra mussels and explain about them;
11. Force the government of Canada to immediately enact legislation to force ships to exchange their ballast water and salt water before entering freshwater ports in Canada.

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Most of this brief, and I am sure the good work of other presenters today, has dealt with the effects of and possible solutions to the zebra mussel problem. Certainly that is the reason for today's session, but there must be one more greater goal. This goal must be to do everything possible to stop the next non-native species from entering Ontario's waterways. The practice of ocean-going ships bringing fresh water species from around the world and allowing them to be dumped in our waters is insane and totally unnecessary.

We are going to hear that shipping is a federal responsibility, but it is our position that water quality is everyone's responsibility and the rights steps must be taken without delay. Remember, Ontario is the only province on the Great Lakes. There is no magic to preventing the next zebra mussel; it just needs a commitment.

A bill is currently being reviewed by the United States Senate which would mandate ballast water exchange in vessels entering Great Lakes waters only. We must have equal legislation for Canada, and it must include Canadian freshwater ports below the Great Lakes as well.

The zebra mussel is not the first non-native species to create havoc in this province or country. Just look at the millions that have been spent on trying to control the gypsy moth and the sea lamprey and the destruction they have cost. We should have learned our lessons long ago.

We are probably aware of the strict enforcement of different countries and states used to protect agricultural crops, eg. no importation of citrus fruits into the United States because of the risk of disease to the citrus fruit crops of Florida and California, no transportation of soils across borders because of the risk of diseases to agricultural crops. But what do we do to protect one fifth of the

world's freshwater supply or the drinking water of 25 million people? Precious little, we believe.

We all must start to consider our water resources inviolable and adopt appropriate policies.

The OMOA would like to express its deep gratitude to this committee of the Ontario Legislature for the opportunity to have input into the problem of the zebra mussel in Ontario. Hopefully, our comments may assist in some way.

Mr Ramsay: First, I would like to congratulate you on your presentation, not only the tremendous scope of material presented—certainly the strength of conviction you bring to it—but also the number of recommendations you bring. I believe that so far you have brought more recommendations than any other group. That is what this committee is looking for, some recommendations for us to study.

Also, I would like to congratulate you on the work you have decided to take up in trying to develop this model zebra mussel control station. I think that is exemplary, and I thank you for that.

I would like to ask you, really, what your operators are doing today. I am not a boater; I am not part of that culture. I envy that at times. There is a big, new boating activity happening on Lake Timiskaming, where I come from, and some day I would like to be part of that. What I would like to know is whether the culture has changed since we have had this invasion, in how boat operators handle their craft when they take them out of water. What are they doing? How are marina operators handling boats?

Mr Mackenzie: Because the situation is relatively new, it is mainly Lake Erie operators and some in Lake Clair that have been exposed to this. They are finding that when the boats come out of the water in the fall, they require more cleaning. There have been mechanical failures due to cooling system problems because of the zebra mussel clogging up somewhere in the cooling system of the boat. Some boaters may be looking at how they are going to use their boat, and marina operators certainly are looking at how we can allow boaters to continue using their boats in the way they have in the past or the way they want to, by providing new systems so we can clean the boats easier, take them out of the water easier, clean them and get them back into service.

Boats, if they are used a lot, seem to suffer less from the zebra mussel. If the boat is inactive and sitting in place, that boat is going to possibly have more effects from the zebra mussel, but if the boat is used and/or maintained properly, we found the boaters have not been at a disadvantage in using their boat because of the zebra mussel.

In certain areas in Lake Erie, the marinas are having a problem at all with the zebra mussels. In others, it is hard to tell which colour the bottom of the boat is when it comes out of the water if it has not been used that much. They seem to like to settle on the metal parts of the boat, and most boats are fibreglass now. You are looking at trim tabs, outdrives, propellers where the zebra mussel will settle. From the reports I have received, attachment of fibreglass seems to be second choice or less favourable to the mussel.

Mr Ramsay: You make a very passionate plea to do whatever we can to try to prevent the spread of the zebra mussel into inland waters. You also list quite a few recommendations that would help accomplish that: border inspections, highway information signs for education, also that at inspections at truck weigh stations. I take it that you would be recommending sort of mandatory, enforceable types of regulation, that if you are driving on the highway with a boat it is compulsory to drive into a truck weigh scale and have this inspection done.

Mr Mackenzie: That could be one of your recommendations. We pointed it out as a possible tool which could be used. I think of border stations. If a boat is coming across from out of the country, you definitely want to look at that boat. Also, that allows you the opportunity to educate the persons coming into the country about the zebra mussel problem. It is likely, though, that the boater coming into this country will only be coming from the United States—certainly by road—and they will probably be as aware of the zebra mussels as our citizens are or maybe even more aware. But we must ensure that we have some kind of control and bring to our visitors that we are concerned about the zebra mussel.

Truck weigh stations are open on a random schedule. Possibly the Ministry of Natural Resources or the Ministry of Transportation may want to look at boats coming over that government personnel can get a handle on whether boats are actually transporting zebra mussels. Zebra mussels in the adult stage or hard-shell stage can survive out of the water for a number of days depending on temperature and humidity. So they can either travel as the mussel itself on the outside of the boat or travel as the veliger or the larvae in water in the boat.

Mr Ramsay: Do you think marina operators would co-operate in some sort of assistance in enforcement so that we would be able to make sure that boats do not leave marinas overland without some sort of inspection taking place?

Mr Mackenzie: I am fairly confident that marina operators will assist in providing the tools so that the boats do not travel overland as possible sources of infection. With regard to regulation, I think that is going one step further than we would be able to go; that would be up to regulatory agencies. But as to control stations, signage of boat ramps, many of our members already have posters supplied by the Ministry of Natural Resources at those boat ramps trying to bring to the boating public the problem with zebra mussels. I think it has to go a few steps further than what has been done now to ensure that everybody who is taking a boat out of the water realizes what he or she may be doing if they are going to other bodies of water.

Mr Klopp: You mentioned here when you brought up how we have to stop the next potential problem: "Do not try to just find it. Just assume it will be a problem." I totally agree. You brought up about fruits and vegetables. You said it is probably a federal problem. Indeed it is a problem for all of us because we trade in the world and

one of the things we have all talked about is free trade and fair trade. This is one of the costs we have to figure, and I am glad your organization has brought that to our attention. It is one of the things I had already jotted down a few times and I appreciate your bringing that up. I hope you pass that on to people who are always talking about trade and forget about the environment.

You did say, though—legislation that was brought up by fellow colleagues—that you wanted legislation, while you said, "You guys can decide that." Your third recommendation says, "Enact legislation restricting the movement of contained water (ie in bait wells)" etc. Now that is a clear thing you want in legislation. Fine, that is enacted, but how would we make sure that people are not carrying bait water or whatever, this water from—

Mr Mackenzie: I think we can suggest to you what legislation is realistic, how it is enforced and who it is enforced by. I think that is the Ministry of the Environment and the Ministry of Natural Resources. They have regulations in effect now and they are enforced by ministry staff.

Mr Klopp: Do you think by passing that particular one, then people would say, "Oops, it is now against the law so I will make sure that I dump my water out before I go to the next lake?"

Mr Mackenzie: Yes. If there is a law saying you may not take infected water from one body of water to another, part of our mandate and the government's mandate must be to educate the public how to comply with the law. We would have to show them the dangers of taking water in their bilges or in their bait buckets to the Muskokas or Haliburton. We would have to educate them and then enforce it. The education has some relevance. Unfortunately there seems to be a need for legislation.

Mr Jordan: I was wondering what recommendation you would make for the Rideau Canal between Kingston and Ottawa. Being that there is no legislation, what control could we start this spring to stop the transfer of these mussels into the Rideau Canal and the other connected lakes?

Mr Mackenzie: That is a very difficult question, and it may be too late. The zebra mussel has been in in portions of Lake Ontario; since 1989, if I remember correctly, in the Kingston area. Chances are you already have the veligers or adult mussels in that system. If they are not there, there are a number of ways that those veligers of the zebra mussels are going to get there easily, whether it is by boats or turtles or ducks flying and moving. The animals—we call it puddle hopping. The Rideau system certainly should be looked at carefully, because we refer to it as water directly connected to the Great Lakes and it is possibly already contaminated. Even though there have been no adults sighted, that does not mean the organism is not in that water chain. There would have to be more detailed study. That is beyond my scope.

Mr Jordan: So the municipalities along that chain of lakes are going to be looking at the same problems as other municipalities that take their water from the Great Lakes system?

Mr Mackenzie: Yes. I was listening to the previous speakers. Right now you are looking at the lower Great Lakes, but what effect this will have on the inland waterways is just as tremendous. Take North Bay's water system out of Trout Lake; they could possibly have the same problem as the city of Port Colborne.

Mr Waters: I actually represent Muskoka and you have mentioned it a couple of times. I have concerns about the lakes. One of the things you talked about was mussel control stations. What do you mean?

Mr Mackenzie: Thank you for letting me expand on that. The idea would be that in marinas or areas near boat ramps there would be an area where the boater would be able to pull off to the side of the road or the parking lot, away from the water, and treat his boat with a diluted spray of chlorinated water possibly. If there are any young mussels on the boats that are microscopic in size or veligers or larvae in the water in the boat, eg, bait wells and bilges, if they are exposed to chlorine solution that will kill the veligers.

Boats that come out of the water that have visible mussels on them are going to require more treatment in terms of high-pressure sprays or scraping to get those mussels off the water. Most of your boat traffic, though, from boat ramp to boat ramp, involves boats that have been in the water for relatively short periods of time. A man is fishing for salmon in Lake Ontario out of Oakville and next week he is in Lake Simcoe fishing for pickerel. It is this type of traffic that is more common from the boat users. If a boat is in the water long enough to have mussels adhere to it and grow to it, it is probably going to be staying in that body of water for the season.

Our design for the control station, one, would be signage to inform boaters which boaters should be concerned, because if you are not going anywhere but back to Lake Ontario with your boat you do not have to do anything because the water is already contaminated. Two, if the boat is going to another body of water, you want to reduce the possibility of having that boat carry infectious materials—the larvae or the adults. Primarily it would be a chlorine spray, flush or rinse that the boat owner could apply to his boat or parts of his boat to kill any larvae or small mussels.

Right after they have settled on a hard surface from the larvae stage, they are relatively microscopic for a period of a week or two depending on water temperature. Those are affected by—as far as I understand it—chlorine spray, because they are relatively small and they could be killed by the chlorine. But if they are visible in size, then it is going to require a high-pressure spray or scraping.

Mr Waters: What about the one-canal systems—the Rideau was already mentioned, but the Trent system? They are probably the most susceptible. The boats are put in at Toronto or in Lake Erie and they sit there. People get two weeks' vacation and they hit the canal system to make the loop. Have you as marina operators looked at any way of dealing with that situation?

Mr Mackenzie: To repeat what I said to Mr Jordan, the horse may already be out of the barn as far as the Trent and the Rideau systems are concerned. Those two particular

strings of lakes or bodies of water are going to require more study, and possibly lead to further recommendations as to just how many boats actually travel back and forth from contaminated waters to uninfected waters, and then if those waters are now uninfected. There is a good chance they already are.

Mr Waters: I know in the case of Ottawa they picked a boat out of there with mussels on it last fall. So there's good chance they are there.

Mr Jordan: That came in from the St Lawrence.

Mr Waters: Came up the Rideau system.

Mr Cleary: I would like to thank you for your presentation, but there is one thing there. We have sailboats and they are in almost permanently from early spring. How would you suggest they be cleaned?

Mr Mackenzie: Two ways: First of all, if they're sailboats or the large powerboats that are on the lower Great Lakes, normally they do not come out of the water until October and then they will be cleaned off at marinas with high-pressure water sprayers. That will move this year's growth of zebra mussels.

Their cooling systems for their engines, depending on the type of engine, should be inspected certainly as to whether they need chlorine treatment of the cooling system while on land. I believe there are some commercial products already available to treat engine cooling systems. If the boat is suffering a problem during the season, they could be lifted out at the marina and cleaned off again with a high-pressure sprayer. I see no environmental problem at all with that, because you are simply using water and mussels are going to be deposited on land. The marina operator may have a problem with wanting to clean up the mussels, but generally they are small and they dry out in the sun very quickly. It is no worse than oyster shells or clam shells on your beach.

1440

Mr Cleary: I can see quite a few problems, especially on those, but the other thing that has been drawn to my attention is people who are renewing their insurance policies. It states right on them they are not responsible for mussels.

Mr Mackenzie: I am not aware of that. If the insurance companies are putting that on the policies, I imagine they want to protect themselves from, say, engine failure cost. I do not know whether they insure against that, whether it is written out of their policy or not right now.

Mr Cleary: It has been drawn to my attention on a few occasions lately.

Mr Mackenzie: If that is the case, then the boat owner will want to take further precautions in terms of maintenance to guarantee that his boat is not going to suffer from engine failure. Other than engine failure, I do not see a lot of harm that the zebra mussels are going to do to the boats that cannot be solved with regular cleaning. Boats that are left in the water year after year, though, are do not come out for winter storage are going to come up against other problems and they are going to require cleaning of one type or another.

The Chair: Thank you very much for a very interesting presentation, and particularly from the perspective of educating and informing the public. I must thank you for your willingness to provide your recommendations and your obvious willingness to assist the community and the committee in dealing with this problem.

CANADIAN MARINERS' ASSOCIATION

The Chair: The next witnesses to appear are the Canadian Mariners' Association. This group will focus on the impact of zebra mussels on recreational boating. Appearing to present on behalf of the association are Thomas J. Ambly and William A. Milne. I ask you to come forward and identify yourselves and proceed with your presentation.

Mr Hambly: I am Tom Hambly, currently the national commodore of the Canadian Mariners' Association. We are a national association of recreational boat owners and we have a deep concern over the zebra mussel problem. What we are going to present today are some possible solutions, solutions that are not definite but at least are as good as that we have and maybe some of them can be adopted by various organizations. To make that presentation I have brought one of our technicians, Vice-Commodore Bill Milne, who is our engineering officer, and I would like him to make the formal presentation.

Mr Milne: I am Bill Milne. I will just pass these mussels around. You probably saw some yesterday, but these were taken off the bottom of the Pathfinder, which was in Toronto harbour. We hauled it out in November.

The Chair: They cannot hear you if you walk away from the microphone.

Mr Milne: Oh, I am sorry. These mussels that are in the jar—you probably saw some yesterday—are off the Pathfinder, which was the brigantine hauled out in November in Toronto harbour. That Pathfinder had been all around the Great Lakes. These are one- and two-year-old mussels. They have obviously been transporting those one- and two-year-old mussels around the lake. I thought I would bring that. You might notice, when that bottle goes around, that there is some red copper paint attached to the mussels and I will get into that later on.

As Tom said, I am a member of the Canadian Mariners' Association. I also own a company called Alex Milne Associates and that company is partly owned by a location in Ontario. I thought that background may be of interest to you.

I would like to open with a quotation that was done by Captain R. Scott Misener, who originally owned Misener Towing Lines. When they were putting the Seaway in, Captain Misener very wisely said to the Seaway authorities, "Just remember, gentlemen, the Seaway when it opens will become a two-way street." Captain Misener said that 30 years ago and it is interesting that here we are years later trying to solve problems that Captain Misener foresaw. That is, I thought, an interesting point.

I am going to paraphrase this, by the way, because I think you guys want to save some time and I am not a good reader.

I would also like to acknowledge the Ministry of Natural Resources. I think they have done a whale of a job jumping on the zebra mussel issue. I do not think they get enough accolades for that, actually. They have done a good job so far in giving some guidance to this thing. I thought I would point that out.

My company has actually benefited from the Ministry of Natural Resources guidelines in the fact that we have developed some commercial products that boaters can use now to help solve the zebra mussel issue. Team Zebra is the name of that commercial product. That will be on all the marina shelves and Canadian Tire shelves and whatever this spring. I guess what I am pointing out there is that commercial people can kick in pretty fast with solutions.

Getting to the meat of the issue that we want to present here from the mariners, on page 3, the first point was that I think we should look at each one of these magic bullets that comes out in the media. That is one of the things we want to cover. We also want to look at the copper antifouling paint situation, and then we would like to drop some positive ideas on this committee as well.

I will start with the magic bullets. The first one was the soapberry plant. I have not been here for two days, so maybe you heard something about that soapberry plant yesterday. Let me digress. Somewhere in Nigeria the women were washing their clothes and using a plant as soap to clean these clothes, and then they found all the mussels downstream died, so of course the media immediately picked up on that and said: "Hey, here is the solution. The soapberry plant will kill all the mussels."

It does, but it also is four times more toxic to fish. So what I am saying is when the media comes out with this they say, "Hey, here is a magic bullet." Boaters immediately say: "Hey, hold on, this thing has been solved. They found a magic bullet, the soapberry plant. We do not have to worry about it any more." I think those magic bullets should be very carefully looked at by MNR so that the media do not get carried away with them.

I have put a reference in there if anybody wants to follow up on that, the paper that shows the soapberry plant kills fish four times faster than it kills mussels.

The other one out recently was potassium. Potassium does kill mussels. What it does is go into the mussel's gills and explodes the gills. The funny thing is, fish have gills too. So there again you have a magic bullet being bandied about and it can also be detrimental to the rest of the environment. Somebody at MNR or Environment should look very closely at all these bullets.

The next point I want to look at is chlorine. We all know now that chlorine kills mussels. The Ministry of Natural Resources has some very clear guidelines on how much chlorine kills mussels. The problem I see is that as soon as you put that out in the media, that chlorine or bleach kills mussels. I can foresee a dock owner who is pretty frustrated—he has a dockload of mussels—walking down the dock with two bottles of this stuff and loading the environment with chlorine. The amount of chlorine you put in is one tablespoon per gallon, not one gallon per dock. We have to be very careful that we do not get into

overkill with this chlorine, because I do not want to be living in the Great Chlorine Lakes.

Another thing I want to point out is copper toxins. I think probably Gerry Mackie said yesterday that copper is one of the things that mussels do not attach to; that is, a pure copper plate, they will not attach to that copper plate. In fact Gerry does testing of my products in Lake St Clair. They do attach to any other hard surface. Actually they will attach to fibreglass, although I know one of the chaps at OMOA said they will not. They will attach to any hard surface, be it concrete, fibreglass, metal, wood, you name it, they are on it, except copper. But here is the problem with copper: Canada's inland waterways have said that six parts per billion of copper is lethal to trout.

If you start counting that up, if there are 2.4 million registered boats in Canada and every one of these boaters puts a gallon of copper on his boat, we are now dealing with 5,000 tons of copper antifouling every year. They have to pull the boat up and scrape it all off. Where is that copper antifouling going? At 5,000 tons of it, how much of that equates to six parts per billion? It starts to go a little haywire.

1450

In fresh water I do not think you need copper antifouling paints. Yes, in salt water, on barnacles you need it, but in fresh water I do not think so. I think our recommendation is that you just say to the boat owner, "If you want to drive a boat, I'm afraid you have to clean your boat three times a year now instead of once a year." It is that simple. Protect the environment; keep the copper antifouling out of the environment. Copper is considered a heavy metal just like tin or mercury or zinc and just not the way to go. I have been a scuba diver for 30 years and I have been watching Ontario's water and the reefs. Believe me, there is a big difference in the last 30 years.

Mr Ruprecht: In what way? You say there is a big difference.

Mr Milne: I used to dive in Tobermory 30 years ago. Those wrecks were pristine at that point; the water was very clear. Now when you dive on those wrecks at Tobermory, you probably have about yea much, three inches, of muck on there, and who knows what is in that.

Chlorine pucks are one of the ways of keeping zebra mussels out of engines. This is a big problem, because as soon as you put your boat in the water, 10 minutes after you put your boat in the water you can have mussels up that engine, up that intake. They like to go for a dark spot, first of all, so the first place they are going to go is in that intake. You can turn around and pull that boat out of that lake 10 minutes later and you have zebra mussels in there. They will live 14 days out of water, so you can transport them many, many miles.

One of the ways of getting around that is to use a chlorine puck. There are always these sort of what I call kitchen chemists around. They are suggesting they hook a chlorine puck on the engine so that it is near the intake and the mussels will take off and go somewhere else. But hold on a minute. How many chlorine pool pucks can we have in our waterways? I am not sure if that is the answer.

Incidentally, I was at the University of Ohio conference about 30 days ago on mussels and one of the chaps brought up ptomaine poisoning. If you get a whole bunch of dead mussel bodies around, you can create ptomaine poisoning. I would think that probably the marine operators would be very interested in that because it does not hurt much. You will be down hauling your anchor out and licking your lips and the next thing you know you have ptomaine poisoning. I think the Ontario health authorities should look at that.

Are you chuckling because it is good news? Our good news is coming.

Let me give you some alternatives to the toxins. One of them which the Ministry of Natural Resources suggested is a polymer wax. It is a silicon-like wax. Yes, the mussels will attach, but it is 10 times easier to clean them off the bottom of the boat. That is a good alternative to the copper antifouling.

The best thing to kill mussels is hot water. Water at 140 degrees Fahrenheit kills mussels. That is the most eco-friendly way of doing it. In fact, within a month there will be commercially available a bag. You can actually put a baggie around your engine. This solves the problem of boats having to transport mussels inside their engines.

When you are finished boating for the day, you simply slip this bag over the engine, put the engine in neutral and run the engine. The exhaust water, which is hot, much higher than 100 degrees Fahrenheit, now is recirculated through the inlet and you have killed all the mussels in the system. You go home and you leave the bag and whatever is around your engine. That is a simple way of doing it. When you go out for a spin on the lake, you take the bag off, for a spin, bring it back and then repeat the process. You will not be transporting mussels if you use the zebra bag on the back of the engine.

What we are looking at in the Mariners and my committee are methods of controlling the mussels without getting involved in toxins. That zebra bag is a very effective method. It costs a boater about \$89.95 for a bag, but that is the price of doing boating.

Mr Ramsay: Where can I get one?

Mr Milne: We have sold one already. Any more?

Getting to our positive suggestions, there is a zebra mussel clearinghouse in New York—I have put the address here—which I thought was a good idea. Anything on zebra mussels goes into this clearinghouse and these people disseminate all the data and send them back out again. I think the MNR could be perhaps the zebra mussel clearinghouse Ontario.

I see that we could actually turn this zebra mussel thing into a win-win proposition, where we can actually start creating exports from Ontario using zebra mussels. A good way of doing that is to get everybody to co-operate. I know Ontario Hydro is doing a \$9-million study on zebra mussels. I defy anybody to find out what that \$9 million was spent on, what the results of all that testing are, blah, blah, blah. You cannot get back in the door to find out.

I think anything Ontario Hydro does should be made public to the public so that private enterprise can pick

what they are doing and use that. That is a thought. For instance, I read something the other day saying that nicotine kills zebra mussels. Interesting. We have a lot of tobacco farmers in Ontario out of work.

Interjection: It kills everything.

Mr Milne: Yes, it kills everything. There is a point to somebody who is handling this as a central body could say: "Okay, let's look at nicotine. Is it going to kill the fish? Is it going to kill the people?" The University of Toronto is doing research on the barnacle-like glue that zebra mussels put out. Did anybody describe the glue to you guys?

What a mussel does is he puts a foot down on a surface and he actually draws the moisture away from that surface. Now he really has a dry portion that he can start using glue. He takes a two-part epoxy and he exudes it through this foot on to the surface. If it is a fibreglass surface, which is somewhat porous, that glue just goes right in there; it loves it. The same with concrete or wood. They actually exude this two-part epoxy into the thing. Now they are stuck. They can actually come along a year later and say: "Hey, hold on. I don't like this lunch area," and they can send an enzyme down their leg and let that glue go. They can let go and drift off and attach somewhere else.

In fact, I was at a fishing club, the Labatt's fishing club in London. One of the chaps backed his trailer in the water with his boat on it and went for a beer and a sandwich, and an hour later that thing was loaded with zebra mussels. In an hour there were thousands and thousands on there. They had been sitting somewhere else and thought, "Hey, hold on a minute. That looks like a real picnic," and they moved.

Mr McLean: If he put some of that wax on his boat, maybe they would not have gotten there.

Mr Milne: Do not let me fool you now. Even if you put the wax on your boat, you are still going to get attached. I am saying it is 10 times easier to clean.

Another point I do not know if anybody has pointed out, but I think Marilyn Churley mentioned that Lake Erie is clearing up and looking real good. The problem is that one of these mussels will filter one litre of water. They use half of the plankton for food, the other half they use in a mucus-like ball and they spit it back out again; they do not want it. In that mucus ball are all the toxins concentrated. They did not want to eat that because it had toxins in it. Now the fish come along and eat that and the toxins go straight up the chain into the fish and birds and whatever. So, yes, you are clearing out Lake Erie, but you are passing all those toxins directly up the food chain much faster than ever before. What looks on the surface to be clearing the environment may be creating other problems.

Zebra mussel shells are an excellent source of calcium. Maybe we can grind all these damned mussels up and start using them as Ontario fertilizer. There could be an industry there. Believe it, because there are going to be a lot of mussel shells. It could be a multimillion-dollar windfall to Ontario.

I guess I am saying on page 9 that both myself and Canadian Mariners would like to participate in any program that comes out of this meeting or any positive ideas. We have a feeling that this thing can turn into a win-win situation if we really work at it as a team.

Mr Ruprecht: That was quite an eye-opening presentation, Mr Milne. The thing I regret is that I did not have your two pages of products attached to my copy that you sent around. But I like your idea of turning this into a win-win situation. How would you like the title of zebra mussel commissioner?

Mr Milne: Captain Zebra. We actually appointed a Captain Zebra to go around and talk to all these fishing tournaments. He is a young student out of Laurentian University, so the job is taken.

Mr Ruprecht: That is where I went to school.

You are listing a whole litany of problem areas, from chlorine to copper toxins to tin antifouling agents, I guess, chlorine pucks, ptomaine poisoning, polymer wax, hot water, and on the litany goes. What I would be interested to find out from you is whether you have a pamphlet with you or more information on what you term the ministry guideline of applying a very low dosage, less than 1% chlorine, as an effective killing agent to zebra mussels? It is supported, I guess, or printed by the Ministry of the Environment. Do you have that information?

Mr Milne: It looks like this.

Mr Ruprecht: And it is on there?

Mr Milne: I believe it is on here. Yes, here it is: 15 millilitres of bleach per 4.5 litres of hot soapy water, one teaspoon per gallon.

Mr Ruprecht: Is this pamphlet supposed to go to the public?

Mr Milne: Yes. That is why I said they have been doing a good job on this zebra mussel thing.

Mr Ruprecht: That brings me to the next question, which is worrisome to you. You indicated—I suppose based on this pamphlet as the effective killing agent—you foresee that many of the boat owners or dock owners might want to take this seriously, misinterpret it or misread it and then go in with gallons of bleach or chlorine and go at it that way. Have you got any more information on this? Have you seen people do this, or do you suspect they might do this?

Mr Milne: No, I am kind of looking ahead. With most chemicals people tend to overkill. They think if one teaspoon per gallon does it, boy, the whole gallon is really going to do it to them.

Mr Ruprecht: Thank you. Can I keep this?

Mr Milne: Yes.

Ms Churley: I too am very intrigued by your products listed in the back. Zebra Wax, Zebra Rinse and Zebra Remover, but I do not have the qualifications to assess the usefulness of these. What I would like to say is that I am very pleased to see people looking at less toxic ways to approach the problem.

I am interested in your methods of education in terms of the question just raised around overkill, the overuse of chemicals. I am very interested in a lot of the kinds of regulations that are going to have to come up around boating which will require education. For instance, I am sure you are familiar with the term "grey water," which is very much going to have to be an issue of education because how can you enforce? I guess to some extent it is the same thing in zebra mussels, that there is going to have to be an awful lot of education involved, and the previous deputant spoke about that.

How effective do you see the educational process among boaters? I guess they see it as in their self-interest in this case, and with grey water as well ultimately. That is a loaded question, is it not? You do not have to answer the grey water part. We will leave that out of it.

Mr Milne: I am in the toilet chemical business so I do understand the black water and grey water.

Ms Churley: You know exactly what I am talking about then.

Mr Hambly: Bill is going to give you a copy of one of our newsletters. That was last summer's newsletter. We have been working on this zebra mussel problem for slightly longer than two years. What we have been doing is publishing in our quarterly newsletter to members the problems involving the mussel, sort of educating our members as to where they came from, what they are doing and what is likely to happen and how to handle them. The information is slowly coming in and we are slowly getting more of it out. That newsletter you see there has a one-page article on it, "Mussel Havoc in the Great Lakes." There have been two or three other articles in past newsletters. We are keeping our members up to date and giving them ideas on how to handle it with their own boats.

Ms Churley: Are you finding a good response to the educational component among boaters, or are they the same as any other interest group?

Mr Hambly: They are frustrated. Our members are frustrated in that everything costs them money and everything is more trouble. Some of our members are older and they do not want to pull their boats out two or three times a year and clean them off, because they are 40-foot or 50-foot boats. It does not bother the younger members, who seem to have the smaller boats and the faster boats and the muscle boats, very much. They just pull them out and clean them. The members are basically frustrated in that this is a problem that has come on them which they are having trouble dealing with. We are all going to have to get used to it, that is all, because it is here to stay.

Ms Churley: You might suggest that some kind of regulation is needed to get beyond the volunteer and the education.

Mr Hambly: I do not know. I hate to recommend regulations, but it may come to that.

Mr Milne: One of the things that I have tried to do is get to each one of the media. There are a lot of marine magazines in Canada—let's put a figure of 25—which all relate somehow to fishing or tackle or boats. I have been

asking the editors of each of those magazines to have monthly page where they can educate people. Unfortunately you have to have somebody who is going to pay that page. Perhaps that is a way of education: To have funds put aside for those magazines so that they can put a page of education in each month, not the same page but update them both, on zebra mussels and grey water.

What we are doing on that Team Zebra product line—just happen to have brought some. The wax looks like One of the things we have done is put a proactive sticker on the bottles so that when a person buys that Zebra Wax he peels that sticker off and sticks it on the side of his boat or his trailer. That then allows the lake owner or the cottage owner to say, "Hey, hold on a minute, this guy is participating or has some knowledge or at least is concerned." That is one of the ways we are trying to educate the people, as well as do a little marketing on the side.

1510

Mr Klopp: You brought in chlorine and the fact that we hear about a magic bullet. You are quite right. I heard about chlorine a year ago, just dump the chlorine. I am glad you pointed out to MNR that it is a good thing it is written up that thing that says you only need one tablespoon. I am glad you brought that up and I am glad they have taken the time to write it in their remarks. One thing which might help a lot of us on ideas of what we are learning: You brought up that Ontario Hydro has spent \$1 million. The fact is that they spend about \$1 million a year and they are doing \$1 million a year for the next five years. It is not that they have spent \$9 million already because we do not need to insult anyone, and I am sure you do not want to.

Mr Milne: Sorry, I meant a budget of \$9 million.

Mr Klopp: In fact, a lot of the things that you have talked about, electricity and cobalt-60, they are studying. We heard reports this morning that they are a long way off. I am interested in nicotine. Have you got some data on that back that up?

Mr Milne: Yes. I do not have it here today.

Mr Klopp: I would like that sent along to the committee, or send it to anyone in MNR if they have not got it.

Mr Milne: My research guy has that. No problem.

The Chair: Thank you very much for taking the time to be with us and provide your perspective. It was a very interesting presentation.

FEDERATION OF ONTARIO COTTAGERS' ASSOCIATIONS INC

The Chair: Next to appear is the Federation of Ontario Cottagers' Associations. The federation will focus on the impact of zebra mussels on everyday cottage life—swimming, fishing and water supply. Appearing on behalf of the federation is Steve McKelvie, with, obviously, someone else.

Ms Anthon: I will introduce myself. I am Rejean Anthon, past president of the Federation of Ontario Cottagers. I will just bring you up to date on what and who we are. We do not bring any products to sell except our pass-

our concern to work with a committee such as yourself resolving this critical issue.

The Federation of Ontario Cottagers' Association is almost 30 years old now. We were formed as a result of owner-based property owners coming together with common interests and issues and concerns. We certainly have a variety of agenda, including municipal election issues, taxation but primary is the environmental issues.

We have been aware, certainly, of the zebra mussel problem and how it can penetrate all of the inland lakes and how we might have to deal with it. Our primary method of circulating information is through our member associations. We have approximately 450 associations as members of the federation. We are aware of at least that many more and we can contact them if necessary. Through these associations, of course, we have 50,000 at least direct persons we can contact. Those are the property owners not including all the family members we can influence reach. In the Cottage Life magazine that perhaps some of you have seen, we have pages dedicated to the work of the federation, and we have already raised the issue of zebra mussels through that magazine and intend to do more.

Cottage residents contribute much to the local and provincial economy and we are interested in the conservation of our natural heritage and its varied use for all citizens. FOCA unites cottagers and cottagers' associations in Ontario for the purpose of dealing with governments and organizations with respect to the protection of water resources, to promote effective legislation, safe boating, assist in the conservation of fish, fowl, game and all natural resources, control of pests and noxious weeds, preservation of trees, shrubs and wildflowers and other activities with respect to cottage life.

We do appreciate this opportunity to present our views on the spread of invasive flora, fauna and other organisms through Ontario's natural environment. We have been made aware that there are at least 100 identified exotic species. Some, as I understand, have yet to be identified as a potential threat they might pose to our environment. So we want to especially plead for controls on any future potential invasion of exotic or invasive species.

We are all volunteers to this organization, so we do not bring any research or particular expertise to this committee. We are representing individual persons and property owners and people who just care in general. I will let Steve explain just what our concerns are and what we might recommend.

Mr McKelvie: Our comments are divided into two sections, zebra mussels and purple loosestrife. As Jeanne mentioned, there are others out there that we do not know about yet or at least do not know the effects of yet. They may have to be dealt with at a later date.

As others have mentioned, this brief was written on the basis that the previous submissions have familiarized the committee with zebra mussels and purple loosestrife's background. We will be focusing on how zebra mussels will be impacting on cottagers. Hopefully, some of the suggestions we have might help prevent future environmental invasions.

From our point of view, we see the cottage owners as battling zebra mussels on the front line. Cottagers depend on lake water for swimming, fishing, boating, aesthetic values, and, in many cases, drinking water. So we will be presenting some recommendations to help us in this battle with zebra mussels and other invaders.

We see purple loosestrife as a more widespread problem affecting all of Ontario. FOCA is also interested in the wetlands, and we are particularly concerned about purple loosestrife. As many wetlands have been already lost or damaged we feel that now is the time to draw the line and say, "We have to keep the wetlands we have."

First, dealing with zebra mussels, as has been mentioned, zebra mussels will attach to most structures along the lake or river shoreline. The experience in Lake Erie has been that windrows of zebra mussels have been washed up on shore. This is not a pleasant sight and the impact of walking along the shore in front of your cottage with all sorts of zebra mussel shells and cutting your feet would not be very pleasant. Also, as they do accumulate all sorts of materials in the water, if you happen to cut your feet it is not hard to imagine how you could get some sort of infection.

Another problem cottagers will be experiencing is the effect of zebra mussels on fishing. Zebra mussels feed on microscopic plants, and that is a real interference to the current food chain. The zooplankton which normally feed on the phytoplankton are going to be interfered with. The zebra mussels will remove much of the phytoplankton. We can see that all the good work the Ministry of Natural Resources has done in establishing fisheries in many lakes will be ruined. We have heard of fish that can thrive on zebra mussels, but we have not heard yet that any of the traditional Ontario game fish can thrive on them.

In addition to interfering with the food chain, zebra mussels can affect the experience of fishing at the cottage in other ways. Studies have shown that zebra mussels increase the clarity of the water, and this increasing clarity may damage the conditions for walleye in their spawning areas. Walleye are very sensitive to light, and if the water clarity increases the amount of light increases, and the walleye will have to move to a different area to spawn. We say they might move to a different area. Depending on the way the lake is, there may not be another area to move to. In a very deep lake perhaps they can move to a new area, but there may be some lakes where the walleye fishery will just disappear.

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Another problem is that zebra mussels attach to stones, cobbles and boulders at the bottom of the lake. These are the areas that the lake trout and other fish like to spawn on, so that could cause some problems. So we can see many ways that zebra mussels can really have a dramatic effect on fishing in many of our cottage lakes, and we are quite concerned.

With regard to boating, you have heard presentations regarding boating, and we would share most of the concerns that others have mentioned. Zebra mussels can be found on the hulls of boats. The roughness on the outside of the boat will increase the amount of drag on the hull and reduce the boat's speed and efficiency. While we would

argue that reducing boat speed is probably a good thing, no one can support reduced fuel efficiency.

The problem of removing the zebra mussels from the hulls of boats appears to us to be very difficult. Most of the measures for removing the zebra mussels involve taking the boat out of the water. One method is to wash the hull with bleach and soapy water, but this has to be done a good distance back from the lake or the bleach and the mixture will run into the lake. That solution may be suitable for small boats, but for large boats, it is very difficult to imagine every weekend taking the boat out of the water, washing it off and putting it back in. Perhaps you do this on Sunday, and you come back to your cottage next Friday and you have the same problem again. We feel that in some cases the cleaning of the boats just will not happen.

The guidelines that the Ministry of Natural Resources puts out says that the best tool for removing zebra mussels from boat hulls is a paint scraper. As we say in our presentation, does this mean that cottagers have to scrape their boats all summer long? We go to the cottage for rest and relaxation. Also, the guidelines warn us to be careful, as the shells can be very sharp and we can cut ourselves. It does not sound like a very enjoyable way to spend a weekend.

On wood, aluminum and steel boats, zebra mussels remove the first layer of paint when they attach. The guidelines advise us to scrape down to bare wood or metal and to repaint. We think boating would suffer as a major industry if all that maintenance is necessary.

The removal of zebra mussels by high pressure water or steam cleaning is beyond the capability of most cottagers. Removal of the boat from the water to let the mussels die will only work if the weather is hot and dry. This is also only a possibility with small boats that are easily removed.

Unless a coating can be developed that works effectively to prevent the adherence of zebra mussels to the hull and all other parts of the boat that come in contact with the water, boating at the cottage may disappear.

In addition to the problems with boat hulls, there are problems with boat engines. During the veliger stage, zebra mussels may be drawn into the boat engine's cooling water system. If the engine is left idle for a period of time, colonization may occur in the cooling system. The cooling passages would become blocked, leading to engine overheating, with the possibility of major damage to the engine. To our knowledge, no engine manufacturer has put anything on the market to prevent this scenario.

These problems with both hulls and engines will be particularly hard on those cottagers who have to rely on boats for access to their cottage. Other cottagers may be forced to give up boating due to the cost and inconvenience of dealing with zebra mussels. This would have a very disastrous effect on the marinas whose livelihood is closely tied to boating.

Boat navigation can also be seriously affected by zebra mussels. Navigation and marker buoys have sunk under the weight of zebra mussel encrustations. Docks, pilings and ladders can also become covered with zebra mussel encrustations, making them difficult to use. It is also possible that those facilities could be corroded due to the problems with the excretion from zebra mussels.

We have sort of tied some of this stuff together, looking at what the aesthetics of this thing could look like. If you imagine a lake that has become home to millions of zebra mussels, you will see that the water becomes very cloudy, making it easier for us to see that non-game fish have become common. Diving ducks will constantly be squawking as they feast on zebra mussels. Duck extermination will be everywhere. The lake shore will be strewn with wind-rows of zebra mussel shells washed up on shore by wind-driven waves. Around the edge of the lake will be numerous boats and engines abandoned by their owners due to the cost and time required for upkeep. Down at the abandoned marina, old docks are slowly sinking under the weight of zebra mussels.

Kids no longer swim in the lake because of the danger they get on their hands and bodies. The few kids who cautiously venture into the water find that wearing shoes at least protects their feet. Mostly they sit around with their parents and wish that someone would finally buy the cottage so they could stay in the city and hang around with their friends at the mall. The parents are hoping that someone will buy the cottage as well. Perhaps that is a little extreme, but each one of those things taken together could result in that.

Earlier this afternoon you had some people from the Municipal Engineers Association talking about the problems they have dealing with water intakes. Well, many cottagers will have that problem in spades. Our intake pipes and many of the cottagers take their water from the lake have diameters of 25 to 40 millimetres. The problems the municipal people have—their pipes are 36 inches, or larger in many cases. With our pipes being only 25 to 40 millimetres in diameter, one zebra mussel can grow up to 25 millimetres in diameter, so you can see we have a problem.

Most lake intake pipes have a filter with a foot valve. The filter is designed to keep fish out of the water system, not zebra mussels. The filter will keep out a full-grown zebra mussel; however, full-grown zebra mussels do not swim. The zebra mussels will enter the water supply system in their veliger stage and then adhere to the pipe or the pump casing. If there is no discharge filter, then the whole cottage water system will become plugged. When the cottage water system is drained in the fall, the zebra mussels in the water system will die. When the water system is started up again, the decayed flesh parts of the mussel will cause severe taste and odour problems. It is also possible that these dead zebra mussels will cause health problems.

At the time of this writing, a proper filtering system to prevent zebra mussels from entering the cottage water supply system does not exist. One solution that would work would be to convert to a ground water supply. This would be expensive and may be very difficult to do in some places.

With respect to conclusions we have made with respect to zebra mussels, we believe that battling zebra mussels will be difficult. The battle may not be winnable. The Soviets have been fighting zebra mussels for 200 years. In October 1990, Soviet scientists told the Congress of American scientists to abandon any hope of eradicating

zebra mussel and learn to co-exist with it. Due to the precise nature of zebra mussels, the Soviets are probably correct in their assessment.

As we do not have the tools or techniques to co-exist with the zebra mussel, at least at this point, we must continue to prevent the spread of zebra mussels. Cottagers are essentially on every lake in southern Ontario. This can be viewed as an advantage or a disadvantage. On the plus side, we can watch every lake for the spread of zebra mussels. On the negative side, we ourselves may cause the spread of zebra mussels. The Federation of Ontario Cottagers' Associations will provide every assistance it can to fight zebra mussels. FOCA can provide a quick, effective means of communicating with those on the front line of the battle with zebra mussels.

What is known, or rather believed to be known, suggests that zebra mussels will not be present or will not thrive in all lakes. Lakes that are poor in phytoplankton production, such as many of the oligotrophic lakes in Ontario, may not support a large zebra mussel population. It has been reported that zebra mussels do not reproduce well if the pH of the water is less than 7.4. The zebra mussel requires calcium to form its shell. Thus lakes with low calcium concentrations may be somewhat resistant to zebra mussels. Due to finite resources, it may be prudent to focus on lakes that may be susceptible to zebra mussel invasion.

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Most of the work done to date has been by large utilities on both sides of the border. More work must be done with respect to issues that we have raised in this brief.

The problem with zebra mussels cannot be solved by the province of Ontario alone. All authorities at all levels—provincial, state and federal—on the Great Lakes must be involved. The International Joint Commission on the Great Lakes would appear to be the ideal lead agency or clearing-house.

The invasion of zebra mussels from foreign countries is not the first or certainly will not be the last until ballast exchange regulations are in place throughout the Great Lakes. Other invaders may prove even more difficult to battle.

Some of the specific recommendations that we have with respect to zebra mussels are:

1. The province of Ontario should convene a meeting of all federal, provincial and state governments on the Great Lakes, with the goal of establishing a new agency or designating an existing agency to distribute information and co-ordinate actions against zebra mussels;
2. The province of Ontario should urge the governments of Canada and the United States to establish ballast water exchange regulations for ships entering the Great Lakes without further delay;
3. The province of Ontario should provide practical methods of co-existing with zebra mussels. Protection of individual water supply systems should be a high priority;
4. In order to devote its efforts wisely, the province of Ontario should determine and publish the sensitivity of various water bodies throughout the province to support a

thriving population of zebra mussels. A similar guide was published for the sensitivity of various lakes to acid rain;

5. The province of Ontario should set aside funds for the implementation of zebra mussel control strategies;

The second part of our presentation deals with purple loosestrife.

Purple loosestrife is a plant that has been in North America for almost 200 years. Only recently, however, have we recognized its potential to cause widespread damage to our wetlands. In fact, purple loosestrife has been sold by some nurseries. Even the professionals were fooled.

Every year each purple loosestrife will produce hundreds of thousands of seeds. These seeds can be spread by wind, water or on the plumage of birds. The seeds are very hardy, remaining viable for up to three years. The seeds grow on wet, muddy lands as found in wet meadows, river floodplains and damp roadsides. By the fall of the year, the purple loosestrife has established a tough rootstalk. This tough rootstalk will survive the winter. In the spring, purple loosestrife will sprout from the rootstalk and continue to grow and thrive. Thus its ability to produce large quantities of seeds and also to be able to survive the winter makes the purple loosestrife very successful at spreading across the province.

Purple loosestrife is so successful that it is quickly overtaking many wetlands. The thick wet root system allows the purple loosestrife to physically strangle other plants. This will create a monoculture in the wetlands. Many of us have already seen large areas completely taken over by these rather attractive purple invaders.

Purple loosestrife has a tough, woody texture that is not favoured by many foragers. Thus the foragers ignore the purple loosestrife and eat the plant beside the purple loosestrife. This action also helps to reduce the competition for the purple loosestrife and allows it to expand at an even faster rate. Ultimately, the density of purple loosestrife becomes so high that the animals move out. It has been reported that purple loosestrife has destroyed 190,000 hectares of wetlands in the United States.

As we have noted, purple loosestrife is not new to Ontario or, in fact, the provincial government. A 1982 publication entitled Ontario Weeds was issued by the Ministry of Agriculture and Food, in which the purple loosestrife was noted as being introduced from Europe but now widely naturalized. What seems to be happening now in our wetlands with regard to purple loosestrife seems unnatural to us. Methods must be found to control this weed, or wetlands, as we know them, will be destroyed.

Perennial weeds such as purple loosestrife are difficult to eradicate, as it is necessary to prevent their spread by seeds and to destroy the underground stem and root system. It is our understanding that traditional agricultural herbicides have not shown encouraging results. Herbicides that work on purple loosestrife also affect other desirable plants. Mechanical methods such as mowing and burning have not proven successful. Biological methods may hold some promise. Some weevils feed on purple loosestrife. But will we simply trade one problem for another?

The control of weeds in the province of Ontario is governed by the Weed Control Act. The act states, "Every person in possession of land shall destroy all noxious weeds on it." Purple loosestrife is not classified as a noxious weed under the Weed Control Act. Weeds are classified as noxious for several reasons. Some are noxious because they cause injury to people, some because they increase crop disease, others because they reduce crop yield and are difficult to control or have seeds that blow in the wind. Destroying our wetlands would represent a true environmental disaster in the province.

Control of purple loosestrife is obviously a concern; however, we have a deeper concern. Given that purple loosestrife has been in Ontario for many years, why has purple loosestrife only become a serious problem now? What has happened? Are there currently unknown forces at work changing the environment such that purple loosestrife can now thrive? What other presently benign plants may be poised for widespread growth? These are questions for which we can offer no answer. However, we urge the government to review the problem of purple loosestrife from this frame of reference.

I will skip on to the recommendations that we have regarding purple loosestrife. We recommend that:

1. The province of Ontario should add the purple loosestrife to the list of noxious weeds as defined under the Weed Control Act;
2. As the administrator of the Weed Control Act, the Ministry of Agriculture and Food should become involved in the implementation of the control strategy for this plant;
3. The province of Ontario should initiate a public education campaign to promote an understanding of the problem, with suggested control measures;
4. The province of Ontario should support research necessary to develop control strategy for purple loosestrife;
5. As the purple loosestrife has only recently begun to spread at a high rate, the province of Ontario should determine what environmental factors have stimulated this recent widespread growth.

Thank you very much.

The Chair: Thank you. We will move to questions.

Mr Ruprecht: Thank you to the federation for its hard work to come up with these many recommendations. I only have one question really, and that pertains to your comment on page 4 of your presentation: "In June 1990 the Ontario Ministry of Natural Resources published guidelines for dealing with zebra mussels." I have a copy of the guidelines given to me by the Canadian Mariners' Association, and in these guidelines, you are quite rightly pointing out that the method the ministry suggests is to wash the hull "in a mixture of bleach and hot, soapy water. It was noted that this should not be done close to water bodies or sewers in case the mussels and/or the residual bleach could be returned to the water. This solution may be practicable for small trailerable boats but for large boats, hauling out, followed by transport to a remote location for washing every weekend, is difficult and expensive." You

are concluding that this will not happen. Could you tell this committee what, in your estimation, will happen?

Mr McKelvie: In my personal opinion, if the zebra mussels become such a problem, I think the amount of people who are interested in boating will greatly diminish.

Mr Ruprecht: That is one of the conclusions. The other what is the other conclusion in terms of washing the boat hulls with bleach or chlorine?

Mr McKelvie: I think you may find that the boats just stay there, that if you are interested in using the boat every weekend and if every weekend you have to take the boat out of the water to do something with it, if the motor is breaking off the hull, I suspect the boats will be taken out of the water and put in storage.

Mr Ruprecht: Or taken out of the water and cleaned right on the spot.

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Mr McKelvie: That is possible. You may find that somebody may say, "Well, you know, what I'll do is I'll get a sponge and I'll fill the sponge full of bleach and I'll stand the lake and put it on right there." That is a possibility.

Mr Ruprecht: That would be certainly of great concern to you, would it not?

Mr McKelvie: Yes.

Mr Ruprecht: Can you consequently think of another way to do this? Did you give any thought to that? This is very tough, I know.

Mr McKelvie: As we said, the Soviets have been dealing with this for 200 years and they have not solved it. The Ontario government and the people on this side have been dealing with it for three years.

Mr Ruprecht: This could cause great damage.

Mr McKelvie: I believe so.

Mr Waters: I have a bit of an interest, coming from Muskoka. Are the cottage associations doing any form of education with their members and non-members on the lakes? I know full well that not everyone belongs to the associations on a given lake. Are you, as an umbrella group, or are the individual associations doing much education on their own?

Mr McKelvie: Yes, we are. This spring we are having a seminar in the middle of April and zebra mussels will be on that. As Jeanne mentioned, we have a few pages in cottage-related magazine, Cottage Life, that we have access to. There will be an article regarding zebra mussels. I got it submitted before 7 February. So we are active in trying to get the information out.

As a matter of fact, we did some work with the Ministry of Natural Resources this past year where the ministry used our mailing list to mail out the guidelines that I did mention. We provided a mailing service on behalf of the Ministry of Natural Resources.

We will do whatever we can. We are interested in getting any information we have out to our member associations.

The Chair: I have a question. In terms of purple loosestrife, what in your opinion would be the level of awareness of your members in terms of the problems c

purple loosestrife? Second, in your opinion, what would be the level of awareness of the general public? Third, if we were to embark on a communications strategy, what types of communication would be most effective, in your view?

Mr McKelvie: Okay, with respect to your first question, definitely I have sensed more interest by our members in zebra mussels than purple loosestrife. I would say probably running four or five to one in favour of zebra mussels. There is a noticeable difference in interest.

I would say that cottagers are all quite interested in the environment, so I would say that our interest is probably higher than the general public because I think the general public does not see purple loosestrife as a problem. I cannot recall any non-cottaging persons mentioning anything in conversation. You see very little written in the general press on purple loosestrife. There seems to be a lot in the named publications but in the newspaper there is relatively little compared to zebra mussels.

The best way of getting the information out? I think the Ministry of Natural Resources has done a very good job of alerting everyone to the problem of zebra mussels. I think there are probably not too many people in the province who are unaware of zebra mussels, and I would think if for instance the Ministry of Agriculture and Food undertook part of the same kind of program that the Ministry of Natural Resources did last year in getting out guidelines and posters and fliers and things like that, that would go a long way. Also, quite frankly, organizations like ours can and should be spreading the word as well.

Ms Anthon: I would add that I have some concerns about water-based property owners attempting any kinds of hands-on remedies on their water systems. I am afraid I have to agree with the previous speaker that there is this tendency that if one teaspoon is okay, a tablespoon must be wonderful. I would like to think that the remedies overcome that potential exaggerated environmental damage. I think there is another way.

Mr McKelvie: If I may add to that, the municipal engineers who were here earlier this afternoon are already doing chlorination. They have chlorine facilities that they add to their water. They can deal with it. If chlorine is the way of dealing with water supply, they have the tools on hand to deal with it. They were just talking about redirecting their chlorine.

I think I can safely say there is probably not a cottager in the province who has a chlorination system in his individual water supply if he takes the water from the lake. I do not think any of us would really want to start putting chlorine in the water in our intake systems. As you may know, a little bit of chlorine is good, but too much can be very, very dangerous.

The Chair: Would you have a concern about the safe handling and storage and application then, if I understand you, in terms of some of those specialized chemicals, chlorine being one, by the general public?

Mr McKelvie: That is correct. Again, if I can compare the cottagers' water supply system with the municipal

water supply system, in the municipal water supply they have specific areas to deal with chlorine. They have all the showers and things to deal with chlorine spills and mis-handling problems, where a cottager is just sort of left to his own devices. I think there is a potential for all sorts of problems with that. I would sure like to hear that there was another solution other than chlorine, but maybe that is all we have.

Mr Ruprecht: The local cottage system for water intake, you say most of it is chlorine-operated?

Mr McKelvie: No, none of it.

Mr Ruprecht: None of it is at this point.

Mr McKelvie: To my knowledge.

Mr Ruprecht: Your point was, if word gets out that chlorine could be used against zebra mussels to open up the pipes, that could be a calamity.

Mr McKelvie: Yes. Also, that is assuming that the pipe is plugged. Perhaps another more insidious problem would be if the pipe had not yet plugged and the cottager came up with some Rube Goldberg way of putting chlorine in at the end of his intake pipe and then started using it, and if he did not have the dosage down properly or something like that there could be some health problems as well.

Mr Cleary: Would most of the problems not be right at the foot valve? I think the cottages I am familiar with have a foot valve out there and everything is sealed in there. Would that not be the problem in most cases, just the foot valve?

Mr McKelvie: The foot valve and the little filter that they put on the end of it, those will stop the full-grown zebra mussel. It will not pass through that. But in their veliger stage, when they are just little larvae, when the water supply comes on that foot valve opens up and it can draw in the veligers at that point.

Mr Cleary: If you had some type of a copper apparatus there for a foot valve, would that not solve it?

Mr McKelvie: That might. I have been talking to a fellow down near Kingston who is working on a system trying to get a filter that is fine enough to allow the passage of water and get the zebra mussels in their larvae stage. Perhaps a filter system will work.

We spent last year telling everybody and sending out the mailings and telling them there is a problem; this year, I guess what we would like to do as a cottagers' association is, we would love to send out something to our members saying, "Now, this is what you have to do to deal with it." I think we are past the stage where we have a problem. Now they want practical solutions as to how to work and maybe copper or something like that would be fine.

The Chair: Thank you very much. That was a very good presentation and thank you for bringing the individual cottager owner's perspective to the committee.

The committee adjourned at 1550.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday 31 January 1991

The committee met at 1007 in room 228.

ZEBRA MUSSELS AND PURPLE LOOSESTRIFE

Resuming consideration of the designated matter, pursuant to standing order 123, relating to zebra mussels and purple loosestrife.

The Chair: Order, please. By way of summary, in the last two days of public hearings we have heard witnesses from the scientific and resource management communities, as well as users of Ontario's water resources.

Today, on the final day of public hearings, we will hear from a number of natural resource, conservation and environmental advocacy groups. Also appearing today will be a scientist from the Great Lakes Fishery Commission. The Commission has worked closely with the International Joint Commission.

FEDERATION OF ONTARIO NATURALISTS

The Chair: The first witness this morning is the Federation of Ontario Naturalists and appearing is Dr Ian Kirkham.

Dr Kirkham: First of all, I would like to begin by thanking you for giving the Federation of Ontario Naturalists the opportunity to present its views on the topic of invasive flora and fauna in Ontario.

Despite the short notice prior to the hearings, the federation has produced a written summary and a longer and more detailed report on this topic. I am just going to overview some of the concerns in that brief and the longer report, but I just wanted to draw your attention to the package that you have before you. I hope we will spend some time going through some questions you may have.

The supplement, the main body of the report is broken up into basically five different headings or chapters. First we deal with definitions. Second we deal with the area of prevention. The third category is really a philosophical overview with some discussion on management. The fourth is a description of the various categories of invaders that we see them. Finally, before the discussion, we have a rather extensive list of risks which I point out to you and draw your attention to—it begins on page 13—where we provide a summary of some of the species of concern involving invasive flora and fauna throughout the world.

Many of these have impacted the natural ecosystems within Ontario and so you may have some specific questions about some of those species that we have looked at and drawn your attention to.

Invasive species have been a serious problem throughout the world for centuries. However, it has only recently received moderate attention in Ontario. The debilitating impact of purple loosestrife on our wetlands and the economic and biologic impacts of zebra mussels on our waterways has brought this issue to the forefront.

In our presentation and written briefs we have deliberately not focused extensively on loosestrife and zebra mussels, as we feel these species will likely be dealt with in adequate detail by others. Instead we have addressed numerous other invasive species and issues. We found it necessary to define first off "invasive flora and fauna" and have organized our written reports accordingly.

To begin on that note, not all organisms clearly or easily fall within the animalia or planta kingdoms, for instance, micro-organisms, but for the purposes of our submissions we include these in the category of flora and fauna.

To be an invasive species, we generally consider only those species which can sustain themselves via reproductively viable offspring.

Invasive flora and fauna are derived from many sources. Domestic wildlife that have become established as feral wildlife must be recognized as invasive. Examples of feral cats and dogs damaging native wildlife populations are numerous. These animals often have profound impact and must be controlled.

Where populations of invasive species can be controlled, they should be. This may involve international agreements; for example, the mute swans in Ontario and Michigan. To deal with that introduced species in the province of Ontario only without regard for the populations south of the border is simply inadequate as a control tactic. The real problem lies in the lack of preparation to cope with new invasives. Preventive measures should be given the highest priority since for many of the established invasive species we simply cannot mount a control or management scheme that would be sufficient to deal with the problem.

The greatest source of invasive species are those that rely on humans to ameliorate environmental factors in their favour, to remove zoogeographical barriers or to provide directly or indirectly habitat and nutrition.

In order that we succeed in controlling invasive species, our objective must be cost-effective and realistic. However, we appear to lack direction in this regard as we always seem to be reacting to problem situations rather than trying to prevent them.

Zebra mussels could possibly have been avoided or, at the very least, their invasion could have been slowed to the extent that remedial actions would have been effective. Unfortunately we must now realize that mussels and loosestrife, like lampreys and starlings and others are a permanent part of our environment. Attention must therefore be shifted towards the prevention of future invasive species into our terrestrial and aquatic ecosystems.

We have identified three main categories of invaders: natural, accidental and intentional. I will just overview each of these briefly.

Natural invaders: These are species that enter our ecosystems through natural means, such as range extension. However, due to human caused alterations to the landscape and climate, many of the natural barriers preventing range extension are gone.

Examples include denuding the Carolinian Canada forests, shifts in climatic zones, increased radiation, changing salinity and temperature, agriculture and urban development. For the most part, we must accept natural invaders and if they pose problems, we must learn to live with them. Examples include the potato blight and killer bees, which pose specific societal and economic threats in addition to the ecological impacts.

Accidental invaders: Examples include the ones that I am sure you have heard lots about, mussels and loosestrife. However, there may be considerable overlap with the intentional invaders category, and accidental invaders. Accidents are difficult to control and often impossible to predict. However, enabling legislation placing tight controls on the import of alien species will be extremely effective in managing this category.

Intentional invaders: This includes a broader category that is referred to throughout our reports under introductions. Traditionally, introductions have been conducted to deliberately change natural communities, to increase availability of game species at the expense and without regard for natural wildlife. We have attempted to recreate the homeland by introducing these old-world game and fishes. As a result, we have jeopardized Ontario's natural heritage.

Thus, extreme caution is needed with regard to introductions and intentional invasions. This category poses the single greatest threat, but it is also one that can be effectively controlled provided there is sufficient political will to do so. Examples include many fishes, game species and commercial tree and plant species. The exotic pet trade needs serious attention as it provides the source for many of our current problems with accidental and intentional invaders.

As I mentioned, each category requires political will and commitment. Legislative policy and statutes must allow for the following three points: First, prevention of invasive species; second, management and control of invasive species; third, elimination of the invasive species whenever possible.

Our action must be based first on ecological damage control and prevention rather than economic damage control, as in the cases of loosestrife and mussels. When we are faced with this latter situation, it is often too late.

We cannot assume any invasive species will be benign or even beneficial. We simply cannot determine or predict the downstream costs to our economy, society or the ecology of the province. Therefore, we must focus on prevention and err on the side of caution.

For instance, we do not know whether European goldfinches imported into Ontario as exotic pets will establish themselves in the wild. If they do, will they displace the native goldfinch species? Micro-organisms and ectoparasites or spores may have devastating impacts on native flora and fauna. We will only know when it is too late to

act. Hindsight informs us of the need to look closely sources of invasions and to control as many of them possible.

This may in part be achieved through reverse listing species. Here only those species exceptions are listed those permitted to enter the province. These would obviously include animals like disease-free domestic wildlife and captive-bred animals and plants. We should not permit, nor should we support, the wild animal and plant trade by allowing them to enter Ontario. These should derive from captive stock only.

I think we also must realize that we have a responsibility to other continents and ecosystems outside of the province in that we must prevent the export of our native species into areas where they are non-native. This is the reverse problem of what you are dealing with, but it is a problem for other nations. As we have seen, many mollusk species from our side of the North Atlantic introduced deliberately or accidentally into the North Sea have caused devastating impacts on the fisheries and aquatic resources in Scandinavia and the United Kingdom.

I also would like to mention that we must be very cautious of reintroductions into the province. In this category we are basically dealing with extirpated species those that formerly bred or occurred in the province. There is the potential to spend a great deal of our human and financial resources on reintroductions, but we must be cautious and aware of the reasons for the extirpation of the species in the first place. Have those conditions changed such that the reintroduction can occur, and is it really cost effective for the resources to be spent on reintroductions.

Those are my basic comments. I would welcome any questions.

Mr Waters: Is the Federation of Ontario Naturalists doing any public awareness things in general or just through your periodicals within your own group?

Dr Kirkham: I think the most effective means of communicating with our members and the members of our 80 federated organizations that make up the federation is through our quarterly magazine, *Seasons*. We have routinely run articles about invasive species and the perils of introductions and the impacts of invasive species. In the last two years, for instance, we have run two separate features on purple loosestrife and zebra mussels. We produced a paper some years ago, three years back now, about zebra mussels, and have issued statements of concern and warning about loosestrife far earlier than that to the government.

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In many respects, I think our efforts are spent trying to capture the attention and concern of the government to act responsibly and quickly to deal with invasives. I think now that we have serious economic impacts resulting from the zebra mussels the issue is receiving proper attention, but we remain concerned about purple loosestrife, as there seems to be very little being done currently to start up an eradication or management or control scheme within the government. Rather, the proposal at this time, as I understand it, is to further study its increase.

Mr Waters: Further to that, you talked about your dult magazines, but I seem to recall that when I was a child you had a magazine called Owl. Do you get into teaching the younger generation as they are coming on about this type of hazard?

Dr Kirkham: We do indeed. That magazine, when it was published by the federation, was called Young Naturalist. We then turned it over to Key publications and they have continued it as Owl magazine, so the connection was correct. We do have a youth education program and we produce education supplements to our magazine each issue. They cover a host of issues and introductions in wildlife care and captive wildlife and the ecosystem approach. These are all subjects regularly covered in our supplements.

Mr Waters: Do you have any suggestions, because you are doing this within your magazines, for us as a committee about education with the public?

Dr Kirkham: Very much so. I think one recent example that we were faced with was that after running the article on purple loosestrife in the magazine, one of our members phoned up and said that she had rushed out to her local nursery to buy it because she feared that the species would be eradicated by the province and therefore wanted to get some before it was gone. Clearly we had to go into some greater explanation of the issue with this member and refer back to the feature article on the matter, but I think that illustrates an area of concern and need within public education.

The nursery owners and the general public see species such as loosestrife as pretty and an aesthetically pleasing species to have in their backyards. We must also inform them of the insidious consequences of these noxious invasive species. A full-fledged campaign discouraging people from purchasing wild-caught alien species through the pet trade and discouraging people from planting non-indigenous species in their backyards or in reforesting their properties, their pasture lands, is an area that I think needs immediate attention within education.

Mr Ramsay: I would like to address somewhat your cautions about government sanctioned introductions and reintroductions of species. It seems to me, obviously, mankind's view of the environment has changed quite radically in the last couple of years and in the last few decades. If the committee would be indulgent with me, it seems to me that maybe until the beginning of the century we had a view of nature as maybe that of a sandbox that basically we could totally remodel to our own liking, as a child does in a sandbox.

Maybe even today we still look upon it as sort of a tinkertoy, that you do not make some radical changes, but you can tinker with it and make some changes. I am wondering, with the involuntary, obviously, invasion of some of these species, if we need to be taking a harder look at what mankind does voluntarily to the ecosystem. I notice you do not come outright and say we should be stopping this, but you give us some severe cautions here. Do you see the day when maybe we should absolutely just be stopping this sort of tinkering.

Dr Kirkham: Absolutely. We do get into that point during the discussion in the latter part of the supplement we gave you. We simply have to recognize that we have a responsibility to preserve the integrity of Ontario's natural heritage. We are so adept and able to perturb and change the natural world that we have to rapidly change the way we approach our natural heritage. I think you are quite right. We have tinkered far too long, but we are dealing with a mindset here, that it is our God-given right to do just that.

I think, if anything, it is our responsibility to preserve biodiversity as it occurs and the integrity of the ecological communities. When we add species, we forever change the dynamics of ecological communities. We have not given that much thought when we have done it. There are many examples of introductions that continue today: commercial species, game species, fishes. I think we need to take a hard look at exactly what we are doing and try to assess the downstream costs of those actions.

In many respects, the benefits from those introductions are realized in the short term. What we do not realize for the long term are the detriments to the community. Perhaps that has been a problem within a political system. Those long-term downstream costs are so far away and out of sight that we can avoid discussing or recognizing them.

Mr Ramsay: Let me take the counter argument a little bit just to challenge that. How far would we take this? Sometimes the biodiversity has been affected by incursions of mankind, such as the acidification of lakes. The attempt has been made to try to bring the acid level to more normal levels and maybe to reintroduce a fish species that had been there naturally. I think up to this point the majority of the public agrees with that, that somehow it was man that caused this. Maybe it was not a natural phenomenon. What would you think about that, when we tried to correct an error that mankind had made?

Dr Kirkham: I think you are dealing with a very difficult issue, because often the costs are enormous for rehabilitating ecological communities. For instance, to put into place a remedial action plan for a wetland or to recreate a wetland that has been drained is far, far more expensive than setting policy, regulations, laws and education programs in place to prevent the further deterioration of those habitats. I think there are many cases where we ought to rehabilitate habitats where we have had a devastating effect, but we must recognize that in doing so, we are jeopardizing other programs to prevent the problem from continuing?

The Chair: We have exceeded our time. I will allow one final question.

Mr Arnott: Dr Kirkham, you stated early in your presentation that had the government of Ontario responded sooner to the zebra mussel threat, perhaps it would have been abated somewhat. It has been stated, I think, that it is political pressure that brought the issue to the attention of the minister and made him respond quickly. Why in your opinion did the ministry not respond more quickly?

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Dr Kirkham: I do not think I am in a position to be able to answer that. I might indulge in conjecture that there were pressures essentially to avoid the sterilization of ballast water, because that is costly. The shipping and oil industries would require significant changes to the structure, to the engineering of their vessels and there would have to be strict compliance before these vessels entered the Seaway. There may be, I suspect, many pressures that I am simply not aware of that prevented that from occurring.

The Chair: Thank you very much, Dr Kirkham, for a very informative presentation and for taking the time to deal with this this morning.

GREAT LAKES FISHERY COMMISSION

The Chair: Our next witness is Margaret Dochoda from the Great Lakes Fishery Commission.

Mrs Dochoda: Just a word about the commission to set a context for our interest in this matter: Our commission was created by Canada and the United States in 1955 in response to the invading sea lamprey. Most people know us for our sea lamprey control program. However, our first duty under the convention is to advise the governments of Canada and the United States on issues affecting fish stocks of common concern. The sea lamprey perhaps sensitized us to the problem of exotics, but our first duty is advisory.

The biological invasion of the Great Lakes ecosystem is a serious matter. It is one of the three major stresses: overharvest, pollution and exotic invasion. It is not an obvious thing when it occurs. It is often several years before we know it has happened, before a new organism is detected. If an exotic species becomes established, it is almost always permanent in a large, open system such as the Great Lakes. Often it will spread beyond the Great Lakes, as we will find with the spiny water flea and the zebra mussel. It is costly in many ways, affecting our uses of the Great Lakes, affecting the aquatic community itself in many subtle ways.

The zebra mussel, as Dr Stanley probably told you the other day, is going to cost society several hundred million dollars a year over the next 10 years for the Great Lakes alone. The sea lamprey, which is one of the few exotics whose numbers we can control, costs the United States and Canada approximately \$10 million, in today's dollars, a year to control. It is a cost that will be ongoing.

We believe that with exotic species, given that you cannot put the genie back in the bottle, certainly an ounce of prevention is worth a pound of cure. As Joe Leach probably told you the other day, ships right now are the largest single vector for exotic species. Typically they discharge up to one million gallons of ballast water. To put that in context, a typical swimming pool maybe has 30,000 gallons. Studies have shown upwards of 200 exotic species in this kind of water that is discharged.

We have a concern, not only for discharges into the Great Lakes Seaway which begins this side of Montreal with the first locks, but we are also concerned with discharges into connected waters. The reason for our first recommendation to you is that Canada and the United

States should be encouraged to require ocean-going vessels entering the lower St Lawrence River and the Hudson River to exchange or treat their ballast water. Right now the Canadian guidelines and the new US legislation just ask ballast exchange or treatment of ships coming into the Seaway. That means ships calling at Montreal and Quebec City are not now asked to exchange or treat their ballast.

On the last page, page 8, I traced out a little map from my road atlas. It shows you that the five connections of the Great Lakes to other drainage systems are Lake Nipigon, Hudson Bay, the Chicago diversion to the Mississippi, the canal which connects us to the Susquehanna River, Chesapeake Bay, and the Erie Canal to the Hudson River, and of course the outlet, which is the St Lawrence River.

Of those five inlets, the Hudson has been the invasive route for alewife, white perch, sea lamprey and several plants, primarily through ships' ballasts or cargo, railroad and natural range extension. The St Lawrence, of course, was a source of many of the species such as Atlantic salmon and eels in the Great Lakes originally, and historically we have had a plant and range extension of fourspine stickleback probably by lake vessel ballast water. Of the others, only the Susquehanna has contributed a species and we do not think the others are that much of a threat. Exotics are being discharged into these waters and we believe the back door to the Great Lakes is still open.

Our second recommendation, and I understand the Canadian Coast Guard addressed this the other day, is that Canada and the United States should be encouraged to require all ships to exchange or treat as a prerequisite for the privilege of discharging ballast water from ocean-going vessels into the Great Lakes, the St Lawrence River and the Hudson River. We think it is a question of equity. To allow a single ship to discharge its ballast puts at jeopardy other uses of the Great Lakes. One ship is quite capable of effecting an introduction. That is probably all it takes for most of them.

We understand the Canadian Coast Guard has caught a few bad apples among the shippers. Most shippers have been co-operative, but there are some who will not be persuaded by anything other than a penalty of enforcement. In order to bring these around, the Coast Guard needs the resources—on both sides, really—for adequate monitoring and enforcement. It is just like when we are on the highways. If we do not think we are going to be caught, we are not likely to obey the speed limits.

Another thing that is needed in order for regulations to come into effect, particularly in Canada, are our information needs on effectiveness, which is being studied somewhat, and also, the most important need right now is for research to develop alternatives to ballast exchange. There are situations where it may not be safe. I understand it fairly rare, but sometimes it is not safe to exchange a ballast and they need to have alternatives available. There could be portable or onshore treatment units. Many different kinds are available, everything from hatcheries using ultraviolet light and ozone to pasteurization, whatever.

Our next concern is that it is easy to become very fixated on the shipping problem. There are other vectors and some are just coming into their own. Private aquaculture

a big concern right now among fishery managers. We are asking or hoping, on the basis of fish management agencies' recommendations, that policies will be reviewed in the near future to determine their effectiveness in stopping intentional or incidental importation of exotic organisms and diseases.

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Some of the areas that have been a concern to fish managers recently have been the apparent introduction of the rudd by bait fisheries, importation from the disease-enemy west coast areas. There are a couple of fish diseases out there we do not have in the Great Lakes and frankly we are better off without; they are very difficult to manage. Another would be a risk of escaping striped bass and grass carp from private aquaculture.

In responding to invading species, I would like to encourage you to continue your support for long-term aquatic community databases and research on basic biology. Such information has proven an essential foundation for understanding and mitigating damage inflicted by exotic organisms. For example, the Ministry of Natural Resources Lake Erie plankton survey has documented seasonal density of zebra mussel larvae, which is important information for managing around the species. The Canadian Department of Fisheries and Oceans has a bioindex program on Lake Ontario which is allowing fishery biologists to have some insight into the impact of the exotic biny water flea on the food web, and it makes it possible for early warning.

Another early warning has come from long-term databases and from the United States Fish and Wildlife Service in Duluth, Minnesota, in which their trawl surveys have shown that the exotic ruffe has moved since 1989 from seventh most abundant species in the Duluth harbour to second in 1990. When this particular species gets through the cold water of Lake Superior to areas like Lake Clair and western Lake Erie, it will be of great concern to fish managers since it competes for food with young yellow perch.

We believe that where possible potentially harmful exotic organisms already established in the Great Lakes should be contained. It is not always possible. Usually all you can do is slow them. That is why our emphasis is on prevention. However, with the ruffe, the species I just mentioned, we have sought and obtained the co-operation of Canadian lake vessels in not taking on ballast in Duluth harbour during the times when the juvenile ruffe are present. We hope by that measure to slow down its spread throughout the Great Lakes. We are also making a similar request of US lake vessels.

In order to prevent the spread of the ruffe inland—we think the ruffe and zebra mussel are the two you have a shot at slowing—fish managers will want to consider measures being implemented in Minnesota and Wisconsin. For example, prohibiting possession of ruffe by anglers—you just cannot have them; even if they are dead, you just cannot have them—and perhaps prohibiting the use of any members of the perch family as bait, since troutperch, yellow perch and ruffe appear similar when they are small.

Those wishing to slow the spread of zebra mussels inland might wish to consider the possibility of spreading them in water from the Great Lakes, for example in bait buckets. An area that is really a concern to us is the pet and garden trade. They have shown a lot of interest in selling this freshwater filterfeeder for use in aquaria to keep them clear and in garden ponds.

Ontario's educational materials are being used as a model for efforts in the United States to encourage Great Lakes boaters to dry scrape and/or disinfect hulls before launching in inland waters.

A last concern of ours for the spread of zebra mussels is that many classrooms and labs now have these in their facilities and they are extremely easy to spread down the drain, just a little bit of water can have veliger larvae. It has been amazing to people who are rearing them how easy it is to move it from one tank to another just with a net. That is enough to do it. That is a concern and US legislation specifically mentions the need to develop a policy for handling these things in the lab and to get that information out. I think that is important.

Finally, a little concern of ours is that control measures being developed for zebra mussels will, hopefully, be environmentally safe and there will not be any unadvised relaxation of chemical permits for expediency's sake in the rush to control zebra mussels.

I did hand this out. This is a joint report our commission made with the International Joint Commission on zebra mussels, and there were recommendations for the federal governments in there.

Mr Wood: I want to ask a question on the ballast water as far as ships are concerned. It seems some are complying and some are not. In your opinion, would we have to have 100% compliance in order to control it? Somebody suggested yesterday that it could go up as high as 97% of the ships in which the ballast water is being either treated or controlled. What are your comments on that?

Mrs Dochoda: Guidelines in epidemiology for how severe are the steps you take to contain something have to do with how severe and how permanent the result is. If you look back over the long term, if you are only getting 80% of the ships exchanging, then all you have done is put it off 20 years and the result will be permanent; the zebra mussel is permanent. There are thousands—millions probably—of different species that could be brought in, and over time you get them all, more slowly at 80% but not at all at 100%, and that is why we believe 100% compliance is essential.

Mr Wood: The reason I asked is that there is some correspondence from Mr Lewis saying that the University of Toronto is looking into it and doing samples and various things to see if the exchange of ballast water is effective. This is just as of about a week ago. I just thought I would let you know that there is a chance that a lot of ships are still dumping their ballast water and bringing in other species.

Mr Waters: Going on with what Mr Wood had to say, would it then be your recommendation that Canada, as

they are in the US, should pass a law regulating the change, rather than using the voluntary procedures that are being talked about?

Mrs Dochoda: I think it is like highway speeds; most people would keep within them because it is the right thing to do, and some people need a penalty and they need to know that it is going to be enforced before they will slow down. That is, I think, what the Coast Guard is up against. The shippers have been pretty co-operative as a whole. If they understand what is being asked of them, they have been pretty good. There is a tiny minority who are putting at risk our use of the water and the resource. Yes, I think there need to be regulations. I think there need to be adequate resources for monitoring too, and penalties that serve as a deterrent. It does not have to be money; it could be just stopping them, just turning them away. That is the worst thing you could do to shippers—I think their running time is worth something like \$50,000 a day—just holding them up.

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Mr Waters: What you are saying is regulation without enforcement is virtually useless for those people. Do you have regular contact with the people from the Canadian government or the Coast Guard?

Mrs Dochoda: Pretty regularly. We speak periodically. Under the water quality agreement the two coast guards meet together, and we first advised them of this in 1988. Since then we have had fairly regular correspondence on it. We have tried to be helpful to them. For example, the University of Toronto study, we helped bring them together with people who could study it, that kind of thing. We have tried to be useful.

Mr McLean: The previous administration here had a ministerial committee set up and the strategy was put in place. Have you had any input into that committee or strategy to deal with the zebra mussel?

Mrs Dochoda: Informal conversation with some biologists.

Mr McLean: From what department?

Mrs Dochoda: From the Ministry of Natural Resources.

Mr McLean: you have had discussions with them.

Mrs Dochoda: Informal.

Mr McLean: You have nothing that you have given them in writing that indicated input from the fishery commission.

Mrs Dochoda: No.

The Chair: I will just bring to the committee's attention, we have now reached the 20-minute limit. Is it the committee's wish to continue asking questions of this witness?

Mr Ruprecht: I have a question, Mr Chairman. I am concerned about your last recommendation, or at least the problem that you pinpoint for us. The reason is that we have heard from a number of presenters now who have had the same concerns, I think, about the chemical dis-

charges and usage of chemical agents to prevent zebra mussels from increasing.

We have heard that there were 10 antifouling agents such as copper that had been used on boats. One figure in front of me is a concern that there might be as many as 5,000 tons of copper antifouling paint scraped into the environment every year. There are reports that the Ministry of the Environment permits, with the blessing of the Ministry of Natural Resources, that chlorine is being used as, at this point, the only way to stop and to eliminate some zebra mussels from settling into water pipes. Some reports say that we have usage of 0.5 parts per million in certain municipalities. Other reports say no, the limit is only 2.5 by the Ministry of the Environment. Other reports say that we can get rid of zebra mussels by using less chlorine. Then there are the poisons, polymer waxes and other kinds of chemicals that are being used.

Now, you are raising an interesting point. You are pointing out that the relaxation of chemical permits for expediency's sake in the rush to control zebra mussels should be at least looked at or that practice should not be permitted. Would you then agree that an expansion using certain agents, chemical agents' introduction into the Great Lakes, is a danger to our environment?

Mrs Dochoda: We use selective toxicants to kill sludge lampreys and it is very well studied and very documented what the effect is on the environment. Again, we hear little stories and that sort of thing. We are just very concerned that all programs should receive that level of scrutiny and care in conservation. It is just a general concern.

Mr Ruprecht: What makes you say to this committee—this is your last point, I understand—"Whatever you do, do not relax chemical permits in the rush to control zebra mussels"?

Mrs Dochoda: Did I say "unadvisedly"?

Mr Ruprecht: Unless you want to rush over what would consider the major point of your presentation. That is what you wish to do, of course we will take that into account.

Mrs Dochoda: No, I say ensure environmentally safe control measures for zebra mussels.

Mr Ruprecht: What makes you say that to us? What would you think that—

Mrs Dochoda: That you would do anything other than that?

Mr Ruprecht: Right, or that we would relax chemical permits.

Mr McLean: The previous administration did not do much.

Mr Ramsay: Mr Chairman, where are we now?

The Chair: If we could maintain some sense of order and deal with Mr Ruprecht's question.

Mrs Dochoda: This is a particular concern of our commission and it was also raised by the International Joint Commission. It is based on fear-of-the-future stories: the Ottawa stories and Lake Michigan and just concern so we are just reinforcing that we believe you should ensure environmentally safe control measures to zebra

mussels. I would not expect that you would do anything other than that.

The Chair: Thank you very much for your presentation and thank you for being a witness this morning.

ONTARIO FEDERATION OF ANGLERS AND HUNTERS

The Chair: The next witness is the Ontario Federation of Anglers and Hunters and appearing on its behalf is Mr Terry Quinney. Welcome, Dr Quinney. You can proceed whenever you are ready.

Dr Quinney: Good morning, Mr Chairman, members. Being distributed to you are two items, one a stapled package that appears quite thick, but quite frankly we have included a series of appendices and background information that we feel will be of value in your deliberations. Here is a one-page sheet, separately, of recommendations.

If I may begin by spending a few moments describing who we are and what we do, the Ontario Federation of Anglers and Hunters is the largest conservation organization in Ontario. We are a 63-year-old, non-government, non-profit, charitable organization whose 74,000 members sponsor research, work in habitat rehabilitation, conduct education programs, consult with governments and co-ordinate conservation programs with other organizations. The OFAH mandate includes the protection and enhancement of fish and wildlife populations and their habitats, and the promotion of associated recreational activities.

Members get their hands dirty, their feet wet and put their money where their mouths are in order to fulfil the OFAH mandate, a mandate which seeks a healthy environment for all of the residents of Ontario. In many respects, OFAH has been promoting sustainable development for 63 years in this province, but previously we had been calling conservation.

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Members of our board of directors include renowned scientists such as Dr Ed Crossman, curator of ichthyology at the Royal Ontario Museum, and Dr Dave Ankney of the University of Western Ontario. Dr Ankney's laboratory is currently conducting research on the impact of zebra mussels on waterfowl.

At the head office in Peterborough, soon to be home of much of the head office operations of the Ontario Ministry of Natural Resources, OFAH has about 30 full-time employees. The fish and wildlife services department has among its staff a scientist, a fisheries biologist, a wildlife biologist and a land use planner. I mention this simply to illustrate that OFAH has made significant and long-term investments in protecting a healthy environment.

My own training has been in freshwater biology. My first thesis and published scientific paper concerned the ecology of a native water flea species, *Daphnia pulex*, which is a very important food item for certain fish species and waterfowl alike. More recently, I have published on the reproductive rates of birds in wetland habitats.

Risks from zebra mussels and purple loosestrife: Over three million people fish recreationally every year in our province—most of them are residents—more than half a million people enjoy hunting, and thousands and thousands of additional residents say they would like to partici-

pate in these recreational activities if they were provided with the opportunity.

In the Great Lakes basin, the total annual regional economic impact of the recreational and commercial fisheries was between \$2 billion and \$4 billion in 1985. The fisheries provided some 84,000 worker-years of employment, and sport fishing effort was estimated at 54.9 million angler-days in that year. That information was provided by the Great Lakes Fishery Commission, which you just heard from.

In Ontario in 1985, anglers and hunters spent over \$2 billion on activities, supplies, major purchases and investments directly connected with their sports. That information comes from our own Ontario Ministry of Natural Resources.

The distribution and redistribution of this wealth is also important—for example, from the south to the north and from urban to non-urban economies—but clearly money and jobs are only two components of the direct benefits obtained from recreational fishing and hunting.

Consider the family bonding benefits of a day on the water; the health benefits of regular hikes in and around wetlands and the bush; the psychological benefits of being absorbed in an outdoor activity, away from the stresses and strains of everyday life in the modern world; the dietary benefits of wholesome food on the table, free of chemical additives or preservatives.

Angling and hunting also serve as concrete examples of linking our environment with the economy and quality of life—in other words, serve as examples of the potential for truly sustainable development.

All of the above benefits I have described are at risk of being reduced or obliterated by involuntary introductions of non-native species. But clearly, not all non-native species are detrimental. On Tuesday, you heard Ministry of Natural Resources scientist Dr Joe Leach say that the planned introduction of, for example, brown trout and chinook salmon, among others—we could also list things like rainbow trout—has been very beneficial by contributing, for example, to sport fisheries. However, it is the involuntary introductions that have brought me here to address you today.

What I would like to do now then is highlight some of the important things that you have heard from witnesses who appeared before you on Tuesday, without undue repetition. I will add some comments and finish with some recommendations. Additionally, I urge you to carefully read the accompanying appendices with the presentation, clearly showing the history of the Ontario Federation of Anglers and Hunters' involvement in the subject of exotic species in Ontario.

With reference to purple loosestrife, this past Tuesday you heard Laurel Whistance-Smith, manager, habitat and stewardship section of the wildlife branch of the Ontario Ministry of Natural Resources, say: "The impact of purple loosestrife on native vegetation has been disastrous. The plant readily out-competes native plant species and then forms dense, non-specific stands which appear to maintain themselves indefinitely. In the United States alone, 190,000 hectares of wetland habitat are lost annually to

purple loosestrife." She also told you, "There are indications of serious reductions in waterfowl and aquatic furbearer productivity, because purple loosestrife does not provide suitable habitat for food, nesting and shelter."

Dr Jon Stanley of the US Fish and Wildlife Service told you: "The best chance for attaining control of purple loosestrife in North America is through biological control. Three natural enemies of purple loosestrife"—which are being tested—"are a weevil and two beetles. However, even if the program is successful, it will still take a number of years before results can be obtained in the field. Until that time, other measures must be used on a site-specific basis to protect wetlands and bare soils from takeover by purple loosestrife."

Dr Stanley also said that the United States would welcome Canadian participation in its research and control efforts. We certainly hope that will occur.

On zebra mussels, Dr David Garton, the Ohio State University scientist, told you on Tuesday, "In all my years in biology, I have never seen an organism come from nowhere so quickly to dominate a system so completely."

Chris Brousseau, the zebra mussel program co-ordinator, fisheries branch, Ministry of Natural Resources, said that zebra mussel densities in certain Great Lakes locations have exceeded 500,000 per square metre, but that European densities reach only about 5,000 per square metre. In other words, our densities are 100 times greater than in Europe.

Dr Gerry Mackie, University of Guelph, told you that Great Lakes zebra mussels grow twice as fast as the European ones and that we appear to have our own unique populations. We cannot emulate the European examples, he said.

Each of the scientists you heard from, Leach, Mackie, Stanley and Garton, mentioned the potential harmful effects to the food chain posed by the zebra mussels, as well as fish habitat such as spawning areas.

We brought in a display to again illustrate the potential danger with reference to fish habitat. We use this display in some of our educational efforts to illustrate first hand the terrible potential detrimental effects on spawning that zebra mussels may have.

A very valuable species like walleye, a native species in Ontario waters, very popular—great eating, by the way—will spawn on clean, hard, rocky surfaces. What the zebra mussels of course are doing—and you have heard this for two days now—is simply literally carpeting, coating, what were once very productive spawning areas. The full repercussions of this phenomenon we do not know at this point in time, but it is not only the physical loss of space, the physical loss of where those eggs used to be laid. You were also told that the zebra mussels are filter feeders. In other words, they are sucking food out of the water column, food that was available to other native organisms in the water bodies. Again, simply a visual demonstration of the terrible impact this organism can potentially have.

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Dr Stanley, US Fish and Wildlife Service, said on Tuesday, "There is an immediate need to develop zebra

mussel population control measures, to minimize their impacts on water intakes of industries and on fish and native mussels in the Great Lakes basin." In response to one of your questions, Dr Garton said: "Do everything you can slow the spread. We should commit resources to limit the distribution and spread within North America."

Let us not forget, however, that we have successfully faced the threat of other exotics in the past, for example the sea lamprey. However, that success has been predicated on a sustained long-term commitment to control and constant vigilance. Recently, government commitments have wavered and the result has been an unfortunate increase in lamprey populations in certain locations.

I would ask you to be very sceptical when you hear the words: "We must learn to live with organisms like zebra mussels. We must learn to live with organisms like purple loosestrife." The caution I offer is this, and perhaps I can give an example from my own home or my own backyard so to speak. In some respects I co-exist with houseflies but I manage houseflies. When people say that we can co-exist with sea lampreys and co-exist with zebra mussels, hopefully what they mean is that we will do our utmost to minimize the negative impacts they can have and take control of the situation and actively pursue management techniques.

On the theme of additional threats, game farming in Ontario, that is, commercial businesses which raise native and non-native deer species, in other words, containment for profit, is in our opinion a time bomb waiting to go off. The threats are from several sources, for example, transmission of diseases to our wild populations of native organisms, genetic pollution, escaped animals usurping and displacing resident animals etc.

To conclude, on behalf of the Ontario Federation of Anglers and Hunters I would like to thank the committee for offering us the opportunity to participate in your important deliberations. It is our hope that you will view the potential catastrophes posed by careless introductions of non-native species as an opportunity to demonstrate to the people of our province that our elected representatives do not undervalue our renewable natural resources, do not undervalue healthy fish and wildlife populations, do not undervalue healthy ecosystems. It is also our hope that you will attempt to ensure that government agencies such as Ontario's Ministry of Natural Resources receive the budgets necessary to begin immediate control programs.

I finish by drawing to your attention the sheet of recommendations we have produced for your consideration. Very briefly, we have four immediate recommendations with reference to purple loosestrife, four with reference to zebra mussels, two with reference to game farming and one with reference to the prevention of future disasters.

We recommend with reference to purple loosestrife:

1. Immediately terminate all commercial sales;
2. Declare immediately as a noxious weed;
3. Ensure that the Ontario Ministry of Natural Resources has the budgets to implement immediately the research and control programs now co-ordinated by the United States Fish and Wildlife Service;

4. Petition the federal government of Canada to implement the research and control programs now co-ordinated by the United States Fish and Wildlife Service.

With reference to zebra mussels, we would like to recommend to your committee:

1. Attempt to halt the spread to our inland water bodies;

2. Ensure that the Ontario Ministry of Natural Resources has the budget to implement immediately the research and control programs now co-ordinated by the United States Fish and Wildlife Service;

3. Direct the Ontario renewable resource research grant program—it is commonly referred to as ORRRGP—to identify zebra mussel research and management as a top priority;

4. Increase immediately proactive educational programs targeted to slow the spread.

With reference to game farming:

1. Terminate immediately the game farming of ungulate species, that is, wild, hoofed mammals or what were wild, hoofed mammals;

2. Please urge all three political parties to make the proposed Ontario Game and Fish Act amendments a high priority for early passage.

Finally, with reference to the prevention of future disasters, we would like to recommend the immediate, enforceable halt of all foreign ballast discharges into fresh waters.

Thank you very much.

Mr Ramsay: Dr Quinney, I appreciate your list of recommendations. I must say, though, that I think you are being rather selective in your recommendations. I would go so far as to say that I think you are being very inconsistent in your thought processes in the position you are putting before us today. On the one hand, on page 3 you say that not all non-native species are detrimental and you are very pleased with the introductions the MNR has done in the past into the natural environment; obviously, they are good species of fish, and I know they have brought economic and recreational benefit to the people of Ontario. On the other hand, you come down very hard on game farming, which is not certainly an intentional introduction into the environment. It is a continuation of, I guess, mankind's attempt to domesticate certain animals. It is my understanding that the exotic game animals we do domesticate here and raise for food consumption are not identical to the wild species we have in Ontario. How do you explain what I feel is an inconsistency in this thinking?

Dr Quinney: You have raised several points. Yes, we have been selective. If we had the time and resources we could certainly expand on some additional specific examples with reference to detrimental organisms. However, we have not been inconsistent because there is a difference between planned introductions and involuntary invasions.

With reference to your comments on game farming, our members actually felt the same way you did until relatively recently. The reason for the change is that we have now been provided with direct evidence that the repercussions from game farming simply were not taken into the

cost-benefit analysis, if you like, before game farming was introduced to this province. In other words, in the example of game farming, there may be short-term direct benefits to certain elements of our society. Unfortunately, when the entire context, for example, the effects on other elements of the ecosystem, the risk of disease transmission to our wild and native organisms, is taken into account, it is our position that now, with the available evidence, when all of the true costs are taken into account they greatly outweigh the benefits that can be obtained from this commercial enterprise.

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Mr Ramsay: Have there been disease transmissions from game farm animals to any of our native species?

Dr Quinney: It is my understanding that there are documented cases in, for example, Alberta. In Ontario we know that recently, in the case of the Sundridge game farm, most unfortunately the entire herd had to be destroyed because of disease within the herd. We also know examples from other jurisdictions, for example, Maryland, where the sika deer has, literally, in the wild now displaced the native white-tail deer.

Mr Ramsay: I certainly agree with you, the Sundridge incident was an immense tragedy. That sort of thing should not be allowed to happen. I take it from your answer to my question that maybe in Ontario to date we have not had transmission of disease. What you are saying is that there is potential because of the Sundridge situation. Is that what you are trying to point out, that if some of those animals escaped, the potential is there for transmission?

Dr Quinney: That is precisely the reason we use the words "a time bomb waiting to go off."

Mr Ruprecht: I appreciate Dr Quinney's presentation and the exhibit you brought along, which I find very useful. You have in your presentation not mentioned your concern about chemical controls. I am looking at your supplement. In your supplement you actually mentioned that the Ontario naturalists would be very much opposed to using chemical means to control zebra mussels. How do you feel about the Ministry of Natural Resources in its pamphlet saying you may use one tablespoon of bleach per 4.5 litres of hot, soapy water to clean your boats? Is this only one of the aspects you would caution this committee about? What are your concerns about using chemical agents?

Dr Quinney: With reference to specific control measures, particularly in the chemical realm, I would defer to the experts. However, in the long run, we would certainly like to see totally environmentally friendly combat agents used, so to speak. However, the judicious use of highly specific chemicals should not at this time, in my professional opinion, be ruled out as an option. If I may return to the example of the sea lamprey to illustrate that, it is my understanding that a highly specific chemical has been developed to control the sea lamprey. It is administered in very, very low dosages. The only organism it is lethal to is the larval stage of the lamprey. What our federation visualizes—and again we are basing our opinions largely on the work that has already been done by the US Fish and Wildlife

Service—essentially we hope to have a whole tool box, if you like, of methods of control, both with reference to purple loosestrife, for example, and zebra mussels.

Mr Ruprecht: To ensure that I understand this correctly, the Ontario Federation of Anglers and Hunters would be in favour of using chemical devices for the interim period but would caution that they ought not to be used in the long term. Do I understand that correctly?

Dr Quinney: Again, on the specific question of chemical agents, we would defer to the scientific expertise in that realm; if it were the scientific recommendation that a particular chemical be used, yes, we would agree.

Mr McLean: Does your organization have any input into the interministerial committee?

Dr Quinney: No, sir.

Mr McLean: Were you asked?

Dr Quinney: No, sir.

The Chair: Thank you very much, Dr Quinney, for appearing this morning.

GREENPEACE

The Chair: Our next witness is Greenpeace. Appearing on behalf of Greenpeace is Jay Palter.

Mr Palter: I would like to start by thanking you for the opportunity to speak today. I understand I have 20 minutes. Will someone give me an idea when I am getting towards that so I can get right to the point? You are all getting copies right now of more or less the remarks I am going to make today.

I am going to focus on two points. There has been somebody from Greenpeace listening to some of the other presentations and I have been getting reports about them, so I have some idea of what you have already heard. I would like to focus today basically on two themes. The first theme, which I am sure you have heard a lot of already, is the theme of prevention. The second theme, which I am not sure how much you have heard of—if you have, I am going to say it again—is the focus on chlorine and talking about a chlorine-free response to this problem. I am also, where possible, going to try not to use the word “controlling” exotic species or zebra mussels, because I think what we are really doing is responding to a problem that is there, and we should think of it as responding rather than controlling in the environment.

The prevention argument is pretty common-sense. I am going to try to focus my remarks on zebra mussels, because I think the urge to respond to this matter has come from the zebra mussels’ peculiar way of affecting human population in ways that other foreign exotic species in the Great Lakes have not, or at least not to the same extent. When pipes from industrial facilities start getting clogged up and intake pipes start getting clogged up, all of a sudden there is a lot of concern and we have to deal with the problem, where for many, many years we have had a lot of foreign species in the Great Lakes doing all sorts of damage to the ecosystem and causing all sorts of unbalances in the ecosystem.

So the concept of prevention is quite simple. It basically looks at a problem and says, “Our current experience

of that problem suggests we have to respond to the current problem and prevent it from happening again in the future.” There will be more exotic species that come into the Great Lakes via ballast water and the various other pathways they take to get into the ecosystem, and it would be a grave mistake not to take measures now to ensure that we cover as many as possible of those avenues of entrance into the Great Lakes basin. In particular, I am going to focus my remarks on the ballast water problem, foreign vessels coming into the Great Lakes and discharging their ballast water.

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There are no enforceable regulations currently in place in Canada with respect to ballast water discharges or to exotic species. There are only voluntary guidelines, called the Great Lakes ballast water control guidelines. The guidelines essentially voluntarily call for the exchange of ballast water at sea, at a specified depth, or, in the event of bad weather, the exchange of ballast water no further west than the St Lambert lock, which is near Montreal.

It seems fairly clear to me that voluntary guidelines have not worked so far. We are facing an incursion of yet another foreign species into the Great Lakes. It is quite clear that voluntary guidelines will never work and that what we need are legally enforceable standards and the political will to enforce them.

I would further argue that if the federal government simply went ahead and legislated the current guidelines, we would not be protected from such things as zebra mussels or other species as they can be discharged in the Lawrence River and migrate into the Great Lakes basin.

The main points with respect to prevention are: The best way to control exotic species is to prevent their entrance into the system in the first place. It makes a lot of sense, but it is very easy to ignore that while we are dealing with the urgency of any given infestation problem cannot emphasize it any more. It is quite clear. I think Ontario has quite an interest, touching four of the Great Lakes and the Great Lakes being fundamental to the quality of life of Ontario, that if it does not have the power necessary, it should certainly undertake to work cooperatively with those jurisdictions that do have the power, including the federal government of Canada and the United States, to work towards a very strong enforcement regime to prevent further exotic species from coming in to the Great Lakes.

I am going to turn the balance of my talk to the various control methods or methods of responding to this problem. The one I am particularly going to address is a chemical response and the use of chlorine in various forms to essentially prevent or stop or control zebra mussel infestation. I am going to speak here specifically about zebra mussels, because, as I said, I believe the zebra mussels have caused this issue to come up at this point and I think the chlorine solution is specifically targeted at zebra mussels.

Over the past 50 years chlorine has increasingly become a preferred and favourite antibacterial agent. It is used commonly in sewage treatment, it is used commonly in drinking water treatment and now it is being proposed widely for use as zebra mussel control.

There are a couple of reasons that is the case. First, chlorine is really cheap; relatively speaking, its cost in dollars is very cheap. As I will explain later, its environmental cost in the long term is exceedingly expensive; in a cost-benefit analysis I think we would find it to be not worth the cost and not worth the risk.

But right now, on the market chlorine is a cheap solution to this problem, and it is an easy solution to the problem in the sense that no major changes in processes or operations at the industrial facilities that are mostly affected need to be made and the permitting process for getting permission to use chlorine is a relatively easy process in relation to other chemical substances.

But, as I said, the environmental effects of using chlorine have short-term impacts and long-term impacts. In the printed material I handed you, I will draw your attention to the third page. There are basically three arguments or three points I am going to expand on here.

In general, chlorine, when released into the environment, tends to bind with organic materials and form very persistent and very toxic chemical compounds referred to as organochlorines. Persistence is a very damaging environmental quality, because a chemical that is persistent does not break down in the environment or breaks down into other persistent and toxic compounds. As a result of that characteristic, it tends to accumulate in the environment. Depending on the type of chemical, organochlorines tend to be lipophilic, or attracted to fatty tissues. These persistent chemicals build up in the food chain and are in fact magnified by the food chain. That process is referred to as biomagnification or bioaccumulation.

As human beings as well as other living organisms are part of the ecosystem, those chemicals end up accumulating in our bodies. The extent of that contamination is conveyed most dramatically by the fact that most nursing women living in the Great Lakes basin currently have measurable levels of a whole range of organochlorine contaminants in their predominantly fatty breast milk. This is a grave concern certainly for the scientific community and for our society at large, because of the uncertainty of the effects of not only the breast milk contamination but the in utero exposure that young fetuses and young infants are getting to these chemicals. This is a very widespread problem. Any time you use chlorine, there is a link to the contribution to that problem.

Organochlorines have other effects. I have mentioned some of the reproductive links. There are also other organ damages caused by organochlorines. As well, there is another subgroup of chemicals that have been widely identified to be created when you chlorinate drinking water or when you chlorinate sewage, referred to as trihalomethanes or THMs. Many of the THMs are also carcinogenic. If you are drinking tap water today, you are probably taking in several parts per billion at least of those.

Some other points about organochlorines and chlorine in particular: They come from a multiplicity of sources; they do not only come from disinfection of drinking water or sewage or controlling zebra mussels with chlorine. They are produced when you bleach pulp with chlorine in quite

large quantities in the pulp and paper industry; they are produced when you incinerate any material that has chlorine components or organochlorines in it. In other words, municipal solid waste incinerators produce organochlorines, in particular dioxins but others as well, as a result of the presence of many plastics and chlorine-based chemicals in the garbage.

Hazardous waste incinerators that burn chlorinated materials are similar. Of course, with sewage sludge, if there has been chlorine exposed to the sludge, there is a possibility of organochlorine formation there as well. So virtually all forms of incineration with a chlorine-related material are a generator of organochlorines.

There are other sources as well. I have discussed some of them already. Basically, the point is that when we begin adding chlorine to deal with this problem, if that is the decision made, we will simply be adding to an already serious problem in the environment. It is clear that because of the multiplicity of sources, the cumulative effect of all the chlorine sources and all the effects need to be taken into consideration before we rush headlong into using chlorine to try to control this zebra mussel problem.

Finally, I have alluded already to the fact that the chlorine lifecycle itself is a very toxic one and a very dangerous one. From the manufacture, use and disposal of chlorine, all stages, we get the creation of persistent toxic chemicals. Some of the worst chemicals—dioxins, PCBs, DDT, CFCs—are all organochlorines. We are most familiar with them, because all of them have been confronted and banned at some level, with the exception of dioxins, whose acceptable levels are being raised by governments all over the world, acknowledging the multiple sources of them and the very difficult task of trying to stop those sources.

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It is quite clear that the whole chlorine question and moving away from chlorine because of its various effects on the environment ultimately takes us back to a re-examination of the fundamental issue of chlorine-based chemistry, that is, the chlor-alkali process, where the chlorine is taken out of the salt and then becomes a very harmless environmental contaminant.

It is quite clear that Greenpeace opposes the use of chlorine to control zebra mussels. In a sense, it is creating or adding to a much larger environmental problem in order to solve this current dilemma.

There are various physical and mechanical alternatives I have alluded to here: Strainers and filters can be put on pipes; higher flow rates can be maintained in the pipes; physical scraping, which can be expensive and time consuming, but is still preferable to any chemical use; constructing dual pipes to allow you to shut one off while you are pumping in the other; positioning pipes farther down in the lake where the temperatures are colder tends to be an alternative, because the mussels tend not to gather at quite the same concentrations in colder temperatures farther down in the lake. Of course, the best solution would be an integrated approach of these various physical and mechanical alternatives.

I will conclude with the recommendations, which are quite specific. We are recommending that there be a declaration that any use of chlorine to control zebra mussels is a temporary, interim measure and that the Ministry of the Environment should only issue temporary permits for chlorine use, because this is not a long-term solution. Greenpeace recognizes that there may be some short-term problems with pipes being blocked. Wherever possible, physical or mechanical means should be taken to clear those situations up. In the long term, those are the preferable methods, but in the short term we recognize there may be a temporary need for limited chlorine use.

Any temporary permit that is issued for this chlorine use must contain a sunset provision. That provision will specify a date after which chlorine use for controlling the zebra mussel problem will not be permitted. We recommend that that sunset period be as short as possible but no longer than one year. I must emphasize that any permit or any intention for an interim use of chlorine without a sunset date attached to it will be considered a failure. Greenpeace would consider that a failure to give chlorine use the appropriate concern this government should give it.

No permit, of course, should be granted that gives exemptions to any provincial water quality objectives specifically focusing on chlorine or chloride discharges.

Finally, I mentioned before as well that the Ontario government may not have the authority to make decisions or pass legislation with respect to preventing exotic species from coming into the Great Lakes. We have recommended that in conjunction with the federal government, and the US government if necessary, we undertake a prevention strategy and implement appropriate legislation, and do that in the spirit of the Great Lakes Water Quality Agreement.

The Chair: We have exceed the time. If the committee is in agreement, we will allow Mr Ruprecht and Ms Churley questions.

Mr Ruprecht: Thank you very much for your presentation, especially your explanation of organochlorines, dioxins, PCBs, DDT and CFCs. I want to know from you, though, what would your position be, having indicated to us that we should be very cautious in using chlorine—I would certainly sympathize with that, but we are in a quandary here, are we not? The Ministry of Natural Resources in its little pamphlet is saying we could use chlorine, and it is indicating specifically how and what the measurements are. First, would you be in agreement with the recommendation of the ministry, as it put out this pamphlet? Second, the Ministry of the Environment says that up to 2.5 parts per million of chlorine can be used in order to come to grips with the zebra mussel problem in the Great Lakes in terms of piping, removing them from the water intake parts. Would you address yourself to those two questions.

Mr Palter: The first point is that in addition to the chemicals you have listed and I have listed, I should have put in "etc." There are a lot of chemicals other than those ones. I just wanted to clarify that point.

It is quite clear from my presentation that Greenpeace does not endorse or support or agree with the Ministry of

Natural Resources' recommendations for chlorine use with respect to zebra mussels. I specified that the preference for Greenpeace for the sake of the environment is not to use any chlorine in dealing with this problem. I think it is possible to do that, but there may be situations where chlorine on a temporary, interim basis will be deemed appropriate to deal with the problem.

What I have said is that as long as there is a firm sunset after which that will not be deemed appropriate, the way I have worded it in the recommendation is that a date should be attached to each permit to temporarily use chlorine, or any permit. I think there should be a presence away from it and to use mechanical and physical means wherever possible, but clearly, if there is going to be a decision made—and it would not be Greenpeace preference—to use chlorine, it has to be on a temporary basis and there have to be firm commitments in place to make sure it becomes a temporary measure, if only to promote how important the various ministries involved consider the alternatives. I think it is really important, unless you set a date after which you stop doing something, it does not matter how important you say the alternatives are, there is no incentive to do them. I hope that addresses the question, that any use of chlorine will have to have a sunset date attached to it.

Ms Churley: Was someone from Greenpeace here yesterday when Ontario Hydro gave its presentation, have you seen the documents it put forward?

Mr Palter: No, no one was here and we have not seen their documents.

Ms Churley: Part of their presentation was for people. I do not quite grasp the numbers that are being thrown around, but they talked about injecting chlorine two parts per million for one-half hour every 12 hours, and then continuously at 0.3 to 0.5 parts per million. Also, when I asked about testing for trihalomethanes, they said they have been testing and they were not finding any traces whatsoever.

I just wanted to know if you have a comment on the whole scheme of things. You outlined that chlorine is being widely used, as we know, in all kinds of areas, and we have to be looked at, but in the whole scheme of things, what is your opinion on the amounts of chlorine that are being used as an interim method, as it is right now?

Mr Palter: That is a bit of a difficult question.

Ms Churley: If you look at total load, I guess, how does it fit in?

Mr Palter: As I said, it should be clear that Greenpeace's position here is that the best way to solve this problem is staying away from chlorine. There are other methods to deal with it. They may be more expensive, they may be more labour intensive and they may require more changes, but the zebra mussels are not going to disappear. With respect, it is a long-term problem that needs to be dealt with in a long-term way.

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With respect to the actual quantities and comments on the quantities, I would need to actually see the documents. It is very difficult. I will also add that the point

trying to make are not simply related to the formation of THMs, trihalomethanes, organochlorines, when you purify the water, only in that situation. The introduction to the environment of more free chlorine floating around and looking for something organic to attach to is taking us in the wrong direction. That chlorine represents a massive issue that this society needs to debate, needs to discuss and needs to come to some position on. It would be a mistake in the wrong direction for any government body or ministry to advocate increasing chlorine use anywhere. I still maintain that that was in the best interests of the environment.

This is at a time when chlorine production is actually going down and some successes are being achieved by the environmental movement, particularly because the pulp and paper industry, while not achieving zero discharge and still needs to be urged to do so, is in the process of reducing its chlorine use. I think it would be a retrograde step to introduce more uses for chlorine at a time when chlorine is starting to be acknowledged to be as dangerous as it is.

The Chair: Thank you, Mr Palter, and thank you for taking the extra time to provide answers to those questions.

Mr McLean: I wonder if I could get a clarification. As you are aware, I was ill Tuesday and was not here. I wanted to find out if the report of the interministerial committee that was set up was presented by the ministry on Tuesday, or at what stage that report is. I have not heard anything of it, and I was just curious to know where it is. It should have been before this committee as it is dealing with this very important issue.

The Chair: I will take your concerns under advisement and I will endeavour to find out where that report is.

Mr McLean: Does the parliamentary assistant not know?

Mr Wood: I will have to find out.

GREAT LAKES UNITED

The Chair: The next witness is Great Lakes United, Bruce Kershner is appearing on its behalf.

Mr Kershner: My name is Bruce Kershner. I am an environmental scientist and I am the field co-ordinator for Great Lakes United. Great Lakes United is a binational coalition of over 180 groups from throughout the Great Lakes-St Lawrence River ecosystem. Our membership, which includes community groups, environmental organizations, city and county governments, unions, small businesses, anglers and boaters, extends from Duluth at the western end of the basin to Quebec City along the St Lawrence River outflow. This statement is made on behalf of this community of organizations which is deeply concerned about the condition of the Great Lakes.

I would like to thank the committee for this opportunity to testify here. During this presentation I would like to convey three essential messages. The first is that there is an urgent need to focus on prevention of the introduction of more exotic species. Second, the provincial government must provide funding and cost-sharing for research pro-

grams that are investigating solutions to control the mussels and prevent future invasions. Third, it is imperative that in controlling the zebra mussels we do not introduce cures that are worse for the Great Lakes environment than the scourge we are trying to manage.

As far as the first point, prevention, is concerned, this hearing should not just be about the zebra mussel or about the plant species the purple loosestrife but about all those future exotic species that will invade our waters unless we legislate preventive methods now. There is the real potential that some future species may actually be more destructive than even the zebra mussel and the lamprey.

I would like to point out that among fishery experts the worst fear is that a disease, rather than a fish species or other vertebrate species, could spread throughout the Great Lakes from another continent and could basically devastate entire species. It is a very real possibility.

The introduction of the zebra mussel into the Great Lakes was preventable. Once in the Great Lakes, the zebra mussel and other exotic species are difficult, if not impossible, to control. The best and most effective method of addressing the problem of introduction of exotic species is to simply prevent them from ever getting here. While the door cannot be shut on the zebra mussel, the door can be shut on other potentially damaging organisms. The zebra mussel dilemma we are now faced with can and should be a powerful message to all of us of the difficulty of addressing problems once they are in the lakes. Like toxic chemicals which cannot be mopped up once they are in the lakes, exotic species must be prevented from entering the system.

To prevent introductions or spread of exotics, foreign ships have been asked to voluntarily exchange their ballast water in the open seas or the Gulf of St Lawrence. According to the Canadian Coast Guard, the 83% voluntary compliance rate is encouraging, but 173 ships annually—at least as of my figures six months ago—are not complying. It only takes one ship to introduce a pest such as the zebra mussel, and in fact it probably was only one ship that did that.

It is therefore imperative that there be a mandatory ballast exchange program and rigorous monitoring systems to ensure compliance. Such a program must be coordinated with Canadian shipping authorities. Only through prevention will we truly be able to protect the Great Lakes from the damaging impacts of exotic species.

My second point is much briefer, simply that the government must be in the forefront of spearheading research into solving this problem. It cannot be left to the private sector, it cannot be left to the non-profit sector. The government approach should be legislation, not just policy statements, and it must provide adequate funding and cost-sharing for local municipalities, certainly with regard to prevention, as the parable the ounce of prevention is better than a pound of cure is completely applicable here.

Finally, I would like to stress that it is imperative that the solutions adopted must not contribute to or create other equally or more damaging impacts elsewhere in the ecosystem. According to a 1990 statement by the Ontario Ministry of Natural Resources, there is no known

environmentally sound way to get rid of zebra mussels. I hope they are wrong, but at this moment there is none and only research will tell us if there are environmentally sound methods. We must not lose sight of the fact that control mechanisms must not damage the ecosystem in other ways. We cannot approach the zebra mussel dilemma with a kill-the-clams-but-damn-everything-else attitude.

For some municipalities and corporate facilities, they are viewing their own problem with the zebra mussel as the thing they have to solve, without regard to whether it creates another and worse problem, such as introduction of toxics in place of the zebra mussel. For example, chlorination and other chemical control methods have been proposed for water intakes and other problem areas. These approaches should be treated cautiously.

Available evidence indicates that chlorination of water intakes may cause the formation of trihalomethanes. I am sure you are all aware of that. These halomethanes are potentially carcinogenic and could affect the quality of drinking water. Furthermore, the chlorination method works most effectively only with continuous release of that toxic element. That means relatively high levels on a constant basis, for weeks.

In response to those who say there could be an environmentally safe method of administering chlorine, which is highly unlikely, there is certainly no known way to guarantee safe transport or storage of liquid chlorine. Toxic spills and explosions are always a possibility with this unstable chemical. Again, what is done with the chlorine before it is ever used to treat zebra mussels? It is already dangerous before it gets to the zebra mussel, let alone after it.

Another example of an environmentally unsound approach that has been talked about and strongly considered for use is the use of toxic paints, such as TBT and other similar kinds of paints. These release pesticides that are just as toxic to all kinds of beneficial, native organisms and amount to nothing less than an uncontrolled toxic chemical discharge. I might add that the US Navy and the US Environmental Protection Agency have banned it on any of their facilities, on any of their vessels. It still is allowed to be used for certain classes of vessels over, I think, 82 feet, but I am not fully versed in that matter.

You may also be told about clamtrol, a clam-killing substance that is being used by some power plants. If a special filter mechanism is installed, this pesticide can kill the mussels without being discharged into the lake again, and we are very glad of that. However, our concern about this is that even if it were 100% environmentally safe, it offers only a solution for power plants, not drinking water intakes, boat engines, boat hulls, piers and breakwaters and other structures which could be attached to by zebra mussels.

Last—and this is a highly important point—again, looking at this from the overview, the manufacture of such pesticides almost always results in the production and release of toxic discharges at the chemical plant that

produces the pesticide. Again, this kind of solution is dangerous before it ever gets to the zebra mussel.

Three methods that hold promise for being both effective and environmentally sound are potassium ionolutions, which is a preventive method, ultrasonic attachments, again a preventive method—one brand name they were aware of is Hulltrasonic—and jets to kill and remove the mussels. There may be others, but these three show promise and should be the focus of government-supported research, because these are effective, then we will not have to end using environmentally unsound methods to attack the problem. These may not be the only environmentally promising methods, but we should certainly support research into them.

In conclusion, I would like to thank this committee for the opportunity to present this testimony and look forward to the success of our collective efforts to conserve and protect the Great Lakes ecosystem. Thank you. I will take any questions, if you have any.

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Mr Ruprecht: Mr Kershner, I appreciate your presentation. You talk about that you would be definitely opposed to the use of chemicals in terms of holding back the onslaught by zebra mussels. You also indicate that the use of chlorine and toxic paints and clamtrons and other items would have serious effects for our environment. Would you be in favour of the measure that is at present in use by our government and by our ministers to use chlorine on an interim basis, or do you have any other interim solutions that could be used immediately?

Mr Kershner: As far as immediate use goes, something like the clamtrol at least is effective without being seriously environmentally destructive at this time, at least as far as where it is released, as opposed to where it is produced. So something like that, yes, is a possible alternative that should be considered in the meantime as an interim alternative.

However, getting away from the pesticide and chlorine solution is the best thing in the long run and that is why I am saying that support of research into this problem may yield results quite quickly, such as the things that I mentioned, which we know work. The only question is, is it economically viable, financially viable? Is it usable in all facilities? They know that they worked have seen the Hulltrasonic device. It has worked for years against barnacles, which attach themselves in a very similar way, but they are marine organisms, not lake organisms or river organisms.

So I think that we could have an interim use of something like clamtrol, but chlorine, to me, it is a very frightening kind of prospect to start adding more chlorine into the Great Lakes ecosystem when the whole point is that dechlorination of the ecosystem has been found to be the best solution for bringing this ecosystem back to health. I do not want to go back on that.

Mr Ruprecht: We have hundreds of places at present in Lake Ontario that take water from the lakes. Do you hear you correctly by saying that the use of clamtrons

ould be adequate for intake water pipes for either municipal or other uses?

Mr Kershner: For power plants, I was saying.

Mr Ruprecht: Intake water pipes.

Mr Kershner: As far as drinking water intakes, if chlorine is seen to be the only interim method at this time, I would have to say that those should be temporary permits. It should be viewed as interim and just a priority on research to check out these other ones. I do not think that we may have more than a year before we finally determine something that is better than chlorine.

Mr Wood: Thank you for your presentation. It was a very good presentation. I am leading up to a question. You are saying that there are 173 ships that do not comply with voluntary controls to dumping ballast water or treating ballast water. I just want to read a sentence from the Minister of Transport in Ottawa, saying, "There is no conclusive proof that ships' ballast water discharges are the source of undesirable marine organisms." This is a letter that was written on 23 January to the Minister of Natural Resources in response to saying there should be some controls.

My question really is that if zebra mussels—we have to live with them. It seems that way, anyway. If we were to eliminate them all tomorrow, without controls on ballast water, are we going to have them back again in a year's time without some kind of control between the federal, provincial and international shipping?

Mr Kershner: That is a very good point. Let's say that it was only found at one port and we caught it early and we got rid of it. If ballast water regulation is not implemented, it could be reintroduced, absolutely.

If I heard you correctly, you said that particular agency said that the ballast water was not necessarily the source of many of these exotic species.

Mr Wood: This is a letter from Doug Lewis, the Minister of Transport in Ottawa, saying that there is no conclusive proof of that and they are going to do some research to study into it.

Mr Kershner: Okay, there is a big difference between saying no conclusive proof versus the likelihood or strong suspicion of. The Great Lakes Fishery Commission has concluded that ballast water is one of the major sources of these species.

It only makes sense. I would have to ask that agency the question, "So where else would they be coming from?" There are sources, but ballast water is the way to bring in huge volumes of contaminated water from freshwater ports on another continent and to have it released here. I do not know of very many other sources that would bring that kind of volume.

Mr Wood: I should have mentioned the fact that there is currently a study being carried out under contract by the University of Toronto and the federal government to look at this and do a sampling of it.

Mr Waters: You have mentioned several times here clamtrol. Why is it only available for use at power plants? Why can you not use it on municipal systems?

Mr Kershner: Because it is too toxic; it is as simple as that. What they do is put it into the system of the power plant and filter it in a clay bed before the water is discharged back out into the lake. So it has to be filtered. To do this for drinking water would mean you would have to filter before it goes into your pipes. They know that they cannot get rid of all of it, which is why it should only be an interim method.

You would not want even a small amount of clamtrol, a pesticide to be coming out of your tap water, would you? But the power plant releases it back into the lake, and most of it is kept in that clay bed. It is not the ideal situation. One does not want to do that with drinking water.

Mr Waters: So which is worse, clamtrol or chlorine, as far as being a toxic chemical?

Mr Kershner: Clamtrol is better for power plants. For drinking water intakes, I am not sure what we could do in the interim except put funding and support into research to figure out which ones are correct. There may be some waiting out there among those three that I have just mentioned that are available and safe right now.

Mr Waters: On the potassium one, it is my understanding that potassium is being tested only on one type of minnow and one type of snail and they have not looked at the rest of it, so I would not want to say that one is particularly safe at this point.

Mr Kershner: I think it may be more a matter of figuring out how to administer it in a way that maintains potassium ion levels that are high enough to impede the growth of the zebra mussel. Some of the scientists I have spoken to feel that the conclusions can probably be applied much more broadly to other molluscs.

Mr Waters: Can you explain to me how this clamtrol—I am a bit concerned about the fact that you said this is a highly toxic thing but you think it is safe for power plants. Where did they introduce this? If they introduced it anywhere in their intake, what happens should there be an accident, should there not be any water coming in?

Mr Kershner: That is why I would only emphasize it as an interim method. I am only going by the word of the manufacturers of clamtrol and the industries that have used it along Lake Erie.

Mr Waters: This is not like an independent body. This is somebody who has a vested interest at this point.

Mr Kershner: Yes, but the Ohio Environmental Protection Agency has approved it.

I am not saying that I have a solution at this moment. I am saying I am looking at this from the larger view of, if we start adopting something like chlorination as a method and then just settle on that and continue using it, that will be destructive. I want us to look at any of these interim solutions as interim and put a major thrust towards finding methods that are environmentally sound.

I cannot say what is going to happen in the next year with the zebra mussel and the methods of control, but I can say that if chlorination and other similarly destructive methods

are used after that relatively short period, we will see a decline in the water quality of the Great Lakes.

The Chair: Thank you very much for appearing before us this morning. That concludes our witness list.

If the committee is in agreement, we will recess until in camera session at 1:30 so that we may discuss with search staff the compiling and direction of the report. Are agreed? Agreed.

The committee recessed at 1210.

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 Amott, Ted (Wellington PC)
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 od, Len (Cochrane North NDP)

Substitutions:
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 Lean, Allan K. (Simcoe East PC) for Mr Amott
 precht, Tony (Parkdale L) for Mr Offer

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Wednesday 17 April 1991

Standing committee on
resources development

Organization

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 17 April 1991

The committee met at 1534 in committee room 1.

ORGANIZATION

The Vice-Chair: I call the meeting to order. We have received the resignation of Bob Huget as of 4 April, so the first thing on the agenda for business would be the election of a new Chair. The floor is open for nominations.

Ms S. Murdock: I would like to nominate Peter Kormos.

The Vice-Chair: Any further nominations? Hearing no further nominations, I declare Peter Kormos the newly elected Chair of the standing committee on resources development. At this point I would then turn the chair over to the newly elected Chair.

The Chair: I want to thank Ms Murdock for her motion, thank the committee for the support and thank the Premier's office for not sending somebody running in here saying, "No, no, it's a mistake."

Mr Ramsay: I just would like to know some of the background, how this all happened. I think it is excellent. I think things are being patched up over there. It is great. It is good to see. Congratulations.

Ms S. Murdock: Thank you very much, Mr Ramsay.

The Chair: There is a motion, I understand, to be made by Mr Waters.

Mr Waters: Yes. I would like to move that a subcommittee of the committee on committee business be appointed to meet from time to time at the call of the Chair at the request of any member thereof to consider and report to the committee on business of the committee; that substitution be permitted on the subcommittee; that the presence of all members of the subcommittee is necessary to constitute a meeting and that the subcommittee be composed of the following: Mr Kormos, myself, Mr Ramsay and Mr Arnott, which is the Chair and a member of each of the three parties.

The Chair: Any discussion regarding that motion? Any in favour? Any opposed?

Motion agreed to.

The Chair: I am going to distribute a draft budget that has been prepared for consideration.

Mr Ramsay: Where are we going?

The Chair: Take a look at the draft budget. Any questions, of course, could be addressed to the clerk. Yes, Mr Waters?

Mr Waters: My question would be, is this to cover the zebra mussels and purple loosestrife?

Clerk of the Committee: Yes, the translation and printing of that report will have to be done in the new fiscal year. That is included in here, as well as in the event the committee meets during the spring session to consider some other matter and report thereon, requiring also a translation. Basically there are two report translations, two report printings and a number of other items, mainly just to keep the committee going during the spring session. If there are any summer meetings to be anticipated or any travel, that will have to be done by way of a supplementary budget.

Mr Arnott: I would like to question the second to last item—transportation of goods, \$500. Could you give us an explanation.

Clerk of the Committee: In the event anything has to be moved from one point to another that would be outside of courier service, in the way of reports or any other matter that has to be moved for us.

Mr Arnott: Okay.

Clerk of the Committee: We had to have some trucking done, I know, in the last committee I worked on, and that is where it would fall.

The Chair: Is there anybody who would move approval of the budget?

Mr Wood: I will move approval of the budget.

The Chair: Any discussion? All in favour? Any opposed?

Motion agreed to.

The Chair: Is there any new business people would wish to raise during this portion of the meeting? There will be a meeting of the subcommittee immediately upon the end of this meeting. Is there a motion for adjournment?

Ms S. Murdock: Before we move adjournment, Mr Chair, this committee sits every Wednesday afternoon at 3:30. Is that correct?

The Chair: Mondays and Wednesdays, I am told.

Clerk of the Committee: If there is business before it.

The Chair: Assuming there are things to deal with; otherwise it does not sit. Notice, of course, will be given promptly. There will be plenty of notice before meetings.

Ms S. Murdock: Yes, I am sure.

The Chair: The meeting is adjourned and the subcommittee will now meet. Thank you very much for your co-operation and assistance.

The committee adjourned at 1542.

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Murdock, Sharon (Ms)(Sudbury NDP)
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Ramsay, David (Timiskaming L)
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Report of subcommittee

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Rapport de sous-comité

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Clerk: Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 22 April 1991

The committee met at 1616 in committee room 1.

REPORT OF SUBCOMMITTEE

The Chair: I think we have a very short meeting, a very brief agenda. Everybody has the subcommittee report which deals with the report on zebra mussels, among other things.

Mr Arnott moves adoption of the report of the subcommittee. Is there discussion about the matter?

Mr Huget: No, I was going to second it, if you needed a seconder.

The Chair: No, no seconder needed. All those in favour? Opposed?

Motion agreed to.

The Chair: The report of the subcommittee is approved and adopted.

Are there other matters that people wish to raise? Then we shall entertain a motion to adjourn.

Mr Waters: So moved.

The committee adjourned at 1618.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 24 April 1991

The committee met at 1609 in committee room 1.

REPORT OF SUBCOMMITTEE

The Chair: We are dealing with the report of the subcommittee with respect to the proposal by Mr Waters, pursuant to standing order 123, that this committee devote 12 hours of its time to a consideration of the procedures of the Workers' Compensation Board which impede the provision of efficient services to workers and employers.

There was no issue taken at subcommittee with the propriety of that proposal. There has been a consideration of the subcommittee of witness lists that were submitted, one by Mr Waters and one by Mr Arnott. There were no other lists of potential participants submitted and it was proposed, as is indicated in the report by the subcommittee, that nine hours be devoted to listening to those persons, basically half-hour slots, three hours for the committee to meet after hearing the participants to discuss or to make representations and then to discuss the report with research.

It was suggested that matters commence on Monday 6 May, and it was proposed that these half-hour slots be universal but for the group of four vice-presidents from the Workers' Compensation Board, who will appear as a bloc for a period of one hour. They are the second to last presentation, and the last presentation is the new chair of the Workers' Compensation Board, a half-hour.

There was no consideration of the breakdown between submission and questioning. I think a general rule has been 10 minutes and 15 minutes. I do not know if anybody has any comment on that. That only gives five minutes for each party. In speaking to the report of the subcommittee, somebody may want to talk about that. That is always problematic, is it not? Some participants require so little questioning, others people want to spend more time with.

Mr Ramsay: Maybe the first consideration should be, what does the committee feel would be fair to the presenters as far as their time frame is concerned? Considering the complexity of this subject, what should we be allowing them, what do you think they would require, and maybe work from there. Maybe we should have discussed this before, but anyway we are going back a little bit now that we have already given them a half-hour. What would you think, Dan?

Mr Waters: Yes, I have a concern with four vice-presidents, if they could consume an hour, and we would never actually get to the questioning.

Mr Ramsay: We can dictate, though, the length of their presentations. That is what I am saying.

Mr Waters: Yes, I think we should ask them for very brief opening remarks and then get into the questioning.

Mr Ramsay: Maybe that is the format we would like: What we want to do basically is discuss with you these

matters and we will give you five minutes to present your case on these matters and then we will have 25 minutes for discussion."

The Chair: I think in addition to that, what always happens is that people prepare written reports and then they read those, on the presumption that politicians have difficulty with that. They may be right, but if we could indicate to these people that we would appreciate it, if they prepare written reports, that written reports should be given to us a week before they show up so they could be distributed to the committee.

Mr Ramsay: That might alter the time frame.

The Chair: That would permit all that much more time for discussion, because we would not expect them to read that same report once they got here. We would assume that people had read it.

Mr Ramsay: That would alter the time frame, though, because now we are asking for the report to be given to us a week in advance of our hearings. That might be a timely way of doing it and it might be a good idea then to rethink the scheduling of the hearings in light of adopting that procedure. That might be a very good way of proceeding, that we actually would have written reports. So basically they have presented all they want to say to us. We will digest that individually and then when we come to the hearing, basically it will be discussion. We have it in front of us and we are knowledgeable of their point of view and it would be a half-hour of discussion between all three parties and the delegate.

The Chair: You were talking about the first participants not having a week's lead time. Surely we can make an exception. We can ask them to submit it a day before or two days before and we can make an exception. We do not want this to drag on. I think we can indicate to groups that appear here that they will have some leeway, perhaps five minutes, to do any comments in addition to their submission, but not necessarily so, and then the balance of time shared equally by the three parties.

Mr Ramsay: Do we have enough time to be fair to those people? Let's just look at the calendar. Are we, first of all, going to consider this approach? When does the clerk think she could start contacting witnesses? Tomorrow? I guess if the clerk could start contacting witnesses tomorrow, then we are not starting until the 6th, I do not know if there is time.

The Chair: If the first witnesses have not got enough lead time to prepare written material, well, then we are going to have to make an exception, and hopefully the clerk will juggle the people so that the people who are called first are people who are more likely to have material already prepared or who are going to be brief in their

submission in any event so that we can breach that general rule of five minutes and perhaps extend it a little bit.

Mr Waters: When you look at some of the groups, such as the injured workers' groups, those people probably have a brief in their hip pocket that they can send to us in advance. Some of these groups work constantly on it, so you could probably pick some of those that it is obvious they are going to have something prepared. Even if you got it, I do not know whether you need it a week in advance.

Mr Ramsay: I was wondering if we could ask the clerk's advice, with her experience in this. How much time historically have you found that groups need to prepare their presentations? Are we pushing them too much by the schedule we are proposing?

Clerk of the Committee: The experience I have had is that most organizations would need at least two weeks to prepare written material. If the committee wants it a week in advance, then we are talking about three weeks down the road. The committee may want to consider asking groups to prepare a summary for the committee to have in advance, in which case you may not have to give them quite so much time.

Mr Waters: Are we going to need all that much material from them in advance when we have our own research people doing some work for us as well? They can leave written material with us, if they wish, but they have five minutes for opening statements and after that it is open, and if they wish to leave some written material with each member so that we can deliberate over it or read it and then when we get in our three hours of discussion we could use it then, that is fine.

Ms S. Murdock: Given that I deal with the Workers' Compensation Board, I know that the four VPs from the board have material already ready.

My experience, albeit short-lived at this point, in the previous committee that I was sitting on is that most of the groups were given a half-hour rather than an hour, and almost inevitably it was the groups that would be finished

very quickly in terms of their brief summary of what they wanted to say, and then we would split the time evenly was quite well done. It was the individuals who came who would use up almost all of their time if you did not a limit, as Mr Ramsay has said. So I do not know whether it is necessary for most of these people on the list, from my experience, knowing most of them, to even have to be given much lead time in terms of sending us something.

The Chair: Perhaps the clerk should advise the groups that she contacts what our hopes are and what the ideal scenario is and we simply have to be flexible in that regard. We have indicated, and I think there is consensus as to what the best case would be, but we are going to have to be flexible because of the time constraints. This is one of those 12-hour sessions where we have some real difficulties. We want to get this started as soon as possible. You do not want to get it dragging on, because who knows what could be referred to the committee for consideration in the week to come?

Is there a consensus in that regard then? If so, perhaps somebody could move acceptance or adoption of the subcommittee's report. Mr Ramsay.

Mr Ramsay: Just to summarize then, when the clerk approaches the witnesses, we will say: "We desire to have a half-hour discussion with you, and we would ask that you give a five-minute summary of your position. If you could give us that summary and any other material in advance that, this would be desirable, but if not, we are really anxious to hear you."

The Chair: It seems to me that reflects what the consensus is. Now what about somebody moving adoption of the subcommittee's report?

Mr Wood: I will move adoption of the subcommittee's report.

The Chair: In favour? Opposed? That is carried. Motion agreed to.

The committee adjourned at 1620.

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**Official Report
of Debates
(Hansard)**

Wednesday 29 May 1991

Standing committee on
Resources development

Workers' Compensation Board

Assemblée législative
de l'Ontario

Première session, 35^e législature

**Journal
des débats
(Hansard)**

Le mercredi 29 mai 1991

Comité permanent du
développement des ressources

Commission des accidents
du travail

Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 29 May 1991

The committee met at 1533 in committee room 1.

WORKERS' COMPENSATION BOARD

Consideration of the designated matter, pursuant to standing order 123, relating to the Workers' Compensation Board.

The Chair: Perhaps we can start. We are already a couple of minutes behind time. Good afternoon. I will be asking you of course to identify yourselves, but I want to simply indicate at the very beginning this afternoon that this series of meetings with groups and individuals like yourselves is in response to a members' initiative to have the committee consider the following: A review of the procedures of the Workers' Compensation Board which provide the provision of efficient services to workers and employers. In view of the fact that a limited amount of time is being devoted to it, necessarily so because of the issues which give life to it, it is going to be necessary to confine ourselves to that scope as best possible.

I would first ask you if you could identify yourselves, tell us who you are, and then spend perhaps 10 or 15 minutes saying what you would like to say, after which we will devote an equal amount of time to having people here ask questions of you.

OFFICE OF THE EMPLOYER ADVISER

Mr Stutz: Thank you, Mr Chairman. I am Jeffrey Stutz. I am acting director of the office of the employer adviser, which is a branch of the Ministry of Labour. I am seated today on my right by Tom Carroll, acting regional manager, and by Sean Ford, policy analyst in the office.

I should mention that I took up my responsibilities on an acting basis just three weeks ago on assignment from Small Business Ontario, which is a branch of the Ministry of Industry, Trade and Technology. I managed the advocacy program there on behalf of Ontario's small businesses and also worked on program delivery in the field of entrepreneurship, education and small business programs such as the new ventures loan program. So while I have some direct experience of workers' compensation, I have Mr Carroll and Mr Ford here as resources in the event that your questions get into more technical areas with which I may not be familiar.

I do think my experience in small business will be relevant to the committee's interests because I have had some direct contact with individual business owners and know the difficulty they experience in dealing generally with departments of government. There are probably more than 20 ministries and agencies of the Ontario government with which a new small business owner has to deal, and it is by no means the workers' compensation system alone that the small business owner finds confusing. So we may want to get into that area of simplifying access to government

through this whole maze of services of which workers' compensation is one important part.

I was also responsible for our customer service strategy in the small business field over the past year, and this is part of the flavour of our presentation. The last pages of our brief deal with the need to establish a broad customer service strategy in the Workers' Compensation Board, something which I think we have seen successfully in other parts of the government.

Let me say a word of introduction about the office of the employer adviser. It was founded five years ago by Bill 101 in tandem with the office of the worker adviser essentially to help employers and especially smaller companies deal with the workers' compensation system.

It has three types of assistance really. One is training, a kind of preventive role in which we try to familiarize the owners and staff of companies with the ins and outs of the system: how to manage their claims, how to see through appeals, how to make sure they are fairly treated in the premium payment system of the board.

Second, we will represent businesses, particularly again trying to devote our time to smaller companies as they appeal claims made by their employees which they may consider questionable, in order to keep their costs down. So we will advise them or actually accompany them to hearings or in preparing their objections to claims in the system. Over recent years, we have done 800 to 1,200 of these claims representations per year and about 300 appearances at hearings.

Finally, we play a role in the development of legislation and in the development of administrative policy at the board. We prepare briefs; we consult with the employer community and try to advise both the government and the board on what will be workable and what is in the interest of the employers as an important stakeholder in the workers' compensation system.

I think we are in a position to comment on the obstacles as well as the achievements in customer service at the board, both from our own direct experience as employer advisers dealing every day with adjudicators and others in the workers' compensation system, and also from what we hear from the employers as individual companies and associations with whom we are working day in and day out.

I should mention that the office of the employer adviser appeared before this committee three years ago. I guess the committee was reviewing the annual report of the Workers' Compensation Board, and the office made a number of proposals on customer service at that time as well.

Today I would divide my presentation much as the brief is divided, into three parts: first, our general perspective on how the Workers' Compensation Board is performing as a customer service organization; second, how the board could move towards an effective strategy of customer service;

and third, the specific recommendations which could be undertaken in the short run to address the needs of employers more effectively.

1540

First, as our general perspective, I think all of us can recognize that the board is an organization still in a state of very rapid change and evolution. It has absorbed several waves of new technology—the computer imaging of its filing system, the introduction of voice mail and electronic mail—and very major organizational changes, a serious effort to push decision-making down to the regional level with the establishment of integrated service units. I think we would say from our own experience and that of the employer community that this adjustment, while painful, has started to pay off in results. It is probably correct on the whole to say that service is somewhat better than it was two or three years ago.

At the same time, it is probably not as good as it could be. Our diagnosis of that is that perhaps not enough attention has been paid to the human side of improving service. So the reservoir of skill and knowledge that is in the staff of the Workers' Compensation Board may not have been fully mobilized. The effect of introducing rapid organizational change and technological change in an organization when the people who work there have not been fully involved and reassured can sometimes be pretty frustrating. I think this has been one of the barriers to really making effective service an ideal and an ethic that works in practice at the board, despite very good intentions and significant investments of time and effort.

Nevertheless, there have been some real achievements. I have mentioned the effort to regionalize decision-making, the introduction of a new workers' benefit payment system, the rehabilitation efforts to contract out now to more than 100 clinics and in fact the establishment of a better process for policy consultation very recently at the board. These are all moves in directions that deserve support and recognition.

Considering the big picture, though, I think it is fair to say that what we have seen is an investment in new equipment, technology and organizational change but not what one could say amounts to a comprehensive strategy. This is one of the recommendations we are making. I think you will hear it again from some of the employer groups. There is a need to step back and do a systematic assessment, what we call an operational review, of the service performance of the board. This is not an end in itself, but it is a way of getting a good, factual and objective view of how the board is doing.

What we present today and what other interest groups will present is certainly based on real experience, but it is bound to be anecdotal. You are going to get stories of individual experiences, hundreds of them perhaps, but not the same thing as an organization which is taking on to itself the job of becoming a better servant of the public.

So we put forward the idea of an operational review of service as the first step in creating a real strategy that the board itself and all its employees buy into. Buying into the service ethic—I think that is where perhaps this committee could play a leadership role in moving from criticism and identifying procedures that stand in the way of improve-

ment to a real commitment to serve all of the stakeholders better.

I would say that we have in the brief identified half a dozen areas where specific short-term improvements could be made. These are things that are really irritating to employers and irritating to members of my staff when they try to deal with the workers' compensation system. They are very basic things.

In the first section of the brief we talk about service over the telephone. The voice mail system, the answering machine system installed at the board, is turning out to be a barrier to communication. People cannot talk to a human being these days. Normally when you call, your message is recorded and you will probably hear back within two or four days. That is probably not good enough for many employers, and it is fairly frustrating for members of my staff as well. So we think that telephone service policies need to be looked at.

Similarly, in the area of correspondence there can be very significant time lags in responding. We have set out in the last two pages of the brief our own experience from the offices, setting out how long it takes to get an answer to a phone call, an answer to a letter. We think that although the board has moved to set standards in those areas, the performance is lagging and not meeting those standards.

Some of the other areas which we identify are the revenue system, how premiums and rates are assessed on employers and what happens when they move to appeal; the work processes at the board and the adjudication of claims and some opportunity to simplify the stages of appeal perhaps as we suggest by eliminating one whole stage, the decision review branch. As you can see from our table, the last item appears to amount to a three-month stage in a total of an 11-month process of appeal if things go to the hearing stage. Finally, we set out some proposals on improving communications with employers to keep not just employers but all stakeholders well informed about where their file is and what is happening in the processing of a case.

That concludes my presentation. I would be happy to take questions on any aspect of it.

The Chair: Thank you. We will start with the members to my right and one to my left. Five minutes.

Ms S. Murdock: You said that overall service has improved, but I am just wondering if that is seen regionally as well. Are there particular areas that are of concern? For example, I went on the tour of the integrated service unit here, where there is an imaging unit on almost every desk. That was the pilot project, and admittedly in that area there were fewer complaints than there were in other areas where I was wondering if you found that as well.

Mr Carroll: I think it is our understanding that the service is fairly inconsistent. I think generally the regions have been reporting to us that there is improvement. Some regions are able to reach a good communications status with the WCB, and the differences over the last three or four to six months have been condensing. In other words, people are saying that—for example, Windsor is improving for us. We have gone down and met with the people; they have taken the initiatives. What would have taken a week

get a reply to is now condensing to two days, and in fact link our Windsor people now are fairly happy.

It has taken initiatives from each regional office to do it. There was at one time quite a difference. There might be a week or ten days before a reply. But you need that kind of strategy with the board to condense those times. You can concentrate on that because that is our business. It is much more difficult if you are an individual person to get that kind of reaction.

Ms S. Murdock: You have also recommended an operational review. Who would you recommend to do that?

Mr Stutz: Our view on that was that it should be done by the board itself. You may hear from other groups that an external organization could be invited to do it, and that certainly is a method that other organizations have followed. But the sense of our organization was to build internal commitment to this process, and therefore it seemed to us the way to go was to ask the board to do it with its own resources.

150

Mr Waters: I looked at your survey at the back, appendix 2, where you have total time elapsed and you go to 75 months. Obviously you feel that is too long. Representing employers, how long do you feel it should take to run a case through this system?

1550

Mr Stutz: I am not sure we know what ideal is achievable. Our approach was to say that there is approximately a three-month block in there related to the decision review branch that we felt was in many cases unnecessary. At the minimum, one could say, we should be able to take that down to something in the range of eight months. I mean, this is a complex decision-making process. I do not think it can be overnight but I think there are lags in here that one could work on. Perhaps as an ideal to work towards, one could say a six-month process.

Mr Waters: With the decision review branch, you said a couple of times that you feel it should just be eliminated. In here I do not see anything on it. Could you give me some idea as to how often there is a claim decided at that step? Do you have any information on that?

Mr Stutz: The reference to decision review is at the bottom of page 7 in the brief.

Mr Waters: I was just wondering, because you are saying that it should be done away with. Is there never anything resolved at that step or is it so infrequent that it just does not—

Mr Carroll: I think our position is that this is a paper appeal from an adjudicator. The adjudicator writes a decision, hopefully on the evidence, and it is a well-reasoned one. An appeal from that goes to what is really a higher adjudicator, which is decision review. They do a paper look at what that adjudicator has done, sometimes sending it back to the adjudicator to look at again or they make a decision for themselves. Then that is appealable, of course, on to the hearing at the WCB, which is then appealable on to the tribunal. We do not have the tribunal time, but you are

looking at maybe six months to another year to complete the process. You may be looking at two years or longer.

We are looking at condensing that, at least from an employer's point of view—our appeals, employers' appeals—at least shortening that down. I think noticeable in there is that the access is three to four months. If that could be shortened to a month, we would be looking at four or five months. I do not know. When the system gets clogged and we are not getting the appeals through and people have to wait—I mean, we are talking about a simple appeal here. Maybe just no one is getting justice. We are looking, at least from an employer's point of view, at shortening that and taking out one of the steps.

Mr Offer: Thank you for your presentation. I will preface my question by apologizing. As I run through this, I hope this is not going to be too rambling a question. It is in a number of parts.

The first part I would ask is, have you taken a look at the breakdown of the businesses that are asking or requiring your assistance in terms of their size and what not? You might want to share that with us.

The second point or observation I wish to make is that you have in your appendix 2 indicated the time frame to deal with a particular matter. I see that it runs from basically 9 to 11 months or so. I imagine that is not a question which deals specifically with the system exclusively but also with your workload in terms of being able to meet the number of concerns brought to your attention.

I am wondering if you might want to respond to those, because they might result in some further questions.

Mr Stutz: Let me comment first on your question about size of company. These statistics have not been kept systematically, but at various times in the past the office has surveyed companies to find out the size distribution. My impression of those results is that probably the average employment size of clients of the office would fall in the range of 50 to 100. Despite the desire to serve many smaller companies, it is the larger companies, with more employees who are more likely to have claims, which are aware of the service and are utilizing it.

Second, the time elapsed here has nothing to do with the workload in our office. I think it is fair to say that there is really no lag in our service. We are tracking along at the speed at which the compensation system copes with cases.

Mr Offer: Okay. So this particular appendix 2 is really a commentary on the system as a whole, giving us a bird's-eye view and potentially how it might be able to be improved?

Mr Stutz: Right.

Mr Offer: In appendix 1, I am just going to be asking you to take me through Sudbury, for instance. "Telephone and Letters." Is that a telephone call or letter to your office, received by answering machine, responded to and appeal letter response time? I am just wondering if you could take me right through that chart.

Mr Stutz: I am sorry if the table is not clear. It is the experience of our staff in calling or writing to the Workers' Compensation Board on behalf of an employer. This is from us, as if we were a client of the workers' compensation system. It means in Sudbury, when we call the WCB office

there, do we get an answering machine? Yes, we do. When we call them, how long does it take for the WCB in Sudbury to respond? Two to three days. And so on across the table.

Mr Offer: I might just want to think about that. If there is any time left over and something comes to mind, I will see if I can ask another question.

Mr Arnott: Mr Stutz, I would like to compliment you on your presentation, which has a lot of very good points. Certainly the remark about encouraging the Workers' Compensation Board to buy into the service ethic, I think, is something that could be well received by everyone in Ontario if that were to come about from this exercise.

I would like to describe the typical complaint that I get from small businesses in my riding in Wellington county. Typically it will be a small business from Mount Forest, Fergus or Erin and it is a complaint over the assessment that has been generated. It is a dispute over the accounting figures, the amount of money that the board wants for the assessment. It is quite simple to resolve generally if we get the employer speaking to a senior enough person at the board. Do you have any suggestions about how the assessment system might be simplified to eliminate that problem?

Mr Stutz: Yes, and there is some reference to that on page 4 of the brief. In essence, our ideas there are to get those senior people, the people who deal a lot with revenue matters, to work on them and not perhaps rely on the same adjudicators or hearing officers who deal a lot with claims. I think your observation on the cases that are coming to your office is correct and matches our experience. If we could break away the revenue items which are mainly of concern to the employers and have perhaps peripheral impact on worker concerns, if for the most part those could be in a separate what we call fast-track stream, the employers could get better service than they do today.

Ms S. Murdock: Just on Mr Arnott's question, one of the complaints I have been getting from employers is the form of assessment, in that it is not delineated. Have you had that same experience?

Mr Stutz: I will have to ask Mr Carroll to respond to that. I am not familiar with it.

Mr Carroll: Yes. Almost all assessment forms that come from the board seem very difficult for employers to understand and work with. I think we probably need a committee of employers to come forward to assessment revenue and plot out some forms that are more understandable for them and easier to work with. It seems that minor glitches and minor penalties and things like that are very difficult to remove within the system and are very annoying, and response times are, as in adjudication, very slow. We end up writing a great many letters on a minor point. It certainly impacts on how employers look at the board's efficiency. It is the only department they have to really talk to. You are correct, I think. It is again a matter of form, and I think working more with employers, especially small businesses, you can learn to work with them and understand the system.

1600

The Chair: On page 5 of the report, under "Work Processes, Staffing and Training," you indicate that loads for adjudicators are reported to be as high as 300. Have you been asked whether that means 300 per and whether they are active. Could you elaborate on that, please?

Mr Stutz: Yes, it means 300 or more live files, act files, per adjudicator.

The Chair: At any given point in time.

Mr Stutz: Yes, that is my understanding. That may be a low number.

Mr Ford would like to add a comment on the decision review branch, the earlier question, if time permits.

The Chair: Sure.

Mr Ford: Coming back to Mr Waters's question, my position has clearly been consistently to take the senior most experienced, most knowledgeable, most able people who are usually the decision review specialists and put them at the front, as opposed to putting those with less experience at the front who may have difficulty in making decisions. Then the most seasoned staff can render decisions on file, especially those that may be complex or complicated, as opposed to sending these off from the less experienced people after some time has elapsed to a decision review branch, which adds another three months or better to the process. If you took DRB out, you would end up with a time frame of six months. If you improved access to the photocopying of files and sending those out, to bring them down to a month or less, it would reduce the time frame even further.

This is at least one area where both communities agree. You will hear workers saying: "We don't want it to take long. We want to be able to get a file more quickly." You have employers saying exactly the same thing: "We want to get access more quickly. We want decisions made more quickly." What the employers are asking for is simply for a fair, proper adjudication of a claim, not something quick that misses things and ends up sitting in an appeal system but something that is done as accurately as possible. So it is not for taking something away that is of benefit to workers such as DRB, or for employers. It is for leaving the decisions in the hands of those individuals most experienced to render proper adjudication.

The Chair: The last question, very briefly, is from Mr Ramsay.

Mr Ramsay: I just wanted to follow up on that and ask whether that recommendation has been put forward to the board?

Mr Ford: We have made that recommendation to the board. We also made the same recommendation to the standing committee, when we were last here, as a service issue. Following up from what my director said, with operational review looking at these things as a customer service strategy, how to improve it overall, that would be one item to look at. I would not want to sort of play on the decision review branch and miss out.

Mr Ramsay: Have you any received response to that proposal?

Mr Ford: Not a formal response, no.

The Chair: Thank you very much. We appreciate your coming. I am sure you are looking forward to the report that is prepared. So are we. You will be among the first to know. Thank you for your time this afternoon. We appreciate it.

EMPLOYERS' COUNCIL ON WORKERS' COMPENSATION

The Chair: The next group appearing before us is the Employers' Council on Workers' Compensation.

I should remind people that there is coffee and milk and juice here. Please come on up and pour yourself one or the other, if you wish. Those people who are waiting for their presentation, have a coffee or a juice or a milk. It is about the only thing you are going to get from the government this year. It is a recession. I am sorry.

Would you please identify yourselves and then proceed with your presentation.

Mrs Andrew: My name is Judith Andrew. I am the vice-chair of the Employers' Council on Workers' Compensation. The chair, Jim Yarrow, unfortunately was unable to be with us today. I am here as a member of the executive of the ECWC. I am also with the Canadian Federation of Independent Business.

On my right is John Blogg, with the Ontario Mining Association. To my immediate left is Les Liversidge, with A. Liversidge and Associates. To Les's left is David Frame, with the Council of Ontario Construction Associations.

If it pleases the committee, Mr Chairman, I would like to read a short statement into the record. The statement is reproduced in the kits members have.

The Employers' Council on Workers' Compensation is an umbrella group of over 20 employer industry associations plus major employers and technical experts who work through the council to discuss, research and advocate positions on workers' compensation issues. Together we represent in excess of 80,000 firms in the province of Ontario which are concerned about the operations of the WCB. By acting as a forum for industry trade associations active on this issue, the ECWC develops united employer positions. The full list of our membership is detailed in the kit you have, and you will find it at the side of each of the various newsletters that are in the left-hand pocket of your kit.

ECWC has appeared on numerous occasions before this committee on behalf of our members. In addition to being active on issues contained in Bill 101 in 1984 and Bill 162 in 1989 the council has also made presentations to the resources development committee to assist in the review of the annual reports of the WCB. The last such review was in 1988 to review the 1987 annual report. You are well aware that the board is accountable to workers, employers and, through the minister and this committee, to the Legislature for the overall operation of the system.

Accordingly, we believe that the exclusive focus in these limited hearings on service delivery, while somewhat helpful, misses the mark in providing the necessary system analysis and appropriate solutions for the problems plaguing the WCB.

Nevertheless, you have invited us today to outline our perspective on the service levels to our members at the

WCB. Without doubt, in too many cases, the service which has been forthcoming from the board, not just now but over many years, has ranged from inadequate to totally unacceptable. At this point, however, with a brand-new senior administration in place, there is little purpose in reviewing history and/or assigning blame. Instead, we propose to outline some of the underlying reasons for the deficiencies in service and leave you with recommendations as to how the situation could and should be improved.

We want to clarify that we have high expectations of the new administration because, very simply, our members need prompt accurate replies to their correspondence and telephone questions and concerns.

We recognize that service is the delivery end of a multiple of functions of the WCB. It is crucial to examine the board in a holistic manner to be able to recommend improvements in the system. Most significantly the whole of the WCB has been under severe strain beginning with the passage of Bill 101 in 1984. The system has experienced massive change and change is still ongoing. Allow me to list some of the most significant changes which have tested the system during the past seven years.

In 1985, Bill 101: creation of the Workers' Compensation Appeals Tribunal, the board of directors, the industrial diseases standards panel and the offices of the worker adviser and employer adviser.

In 1986: a complete overhaul of WCB senior management positions and the creation of three vice-presidential positions.

In 1987: complete overhaul of the service delivery systems and new management roles at all levels.

In 1989, strategies: vocational rehabilitation, medical and claims adjudication strategies.

In 1990, Bill 162: introduction of overhauled benefits and pension system and the recreation of seven divisions with seven vice-presidents.

The net result of all these changes is that the board that existed in 1984 has changed dramatically. The total re-vamping of the internal systems alone caused considerable upheaval, and when coupled with major changes in legislative responsibilities, the breadth of these new responsibilities has given little or no time to settle into a mode of providing expected levels of service. These levels will most quickly be met if a moratorium is placed on the development and implementation of new strategic and operational policies. Obviously, there may be some limited exceptions to the moratorium but the brakes should be applied.

1610

Time is necessary to allow staff to grapple with those policies currently in the mix. Employee training is also vital to ensure that policies are well understood and applied fairly and consistently. Additionally, wholesale organization structure and personnel change at the board must halt, and technical changes already under way must be permitted sufficient time to jell. The administrators of the system need time to catch their breath on all of these fronts in order to deliver acceptable service.

Legislators must not forget that the costs of the WCB system are currently at a point of threatening its sustainability. Perusal of our July 1990 newsletter commentary shows

clearly that cost trends are extremely worrisome. I will refer you to our newsletters. July 1990 is the last one in the left-hand pocket, and it is the back of that newsletter. We have also included in your kits a blowup of a particular graph that shows fairly dramatic costs associated in 1988 constant dollars with roughly the same number of accidents as took place in 1978. In other words, the number of incidents did not increase much from 1978 to 1988 over that decade, but the costs went up 153% over that same decade. So we have ballooning costs in the system that are just not producing satisfaction for anyone.

The lesson from past experience is that one cannot simply throw money at a problem and expect it to go away. The system's costs are running out of control while the levels of dissatisfaction with the system have increased at an equivalent rate.

We believe it would be appropriate at this time, under a new government, a new chair and a new vice-chair, to undertake a complete assessment of the board's financial and service operations in the form of a value-for-money audit by the Provincial Auditor. Such an audit would be invaluable for the administrators of the board in formulating their plans, and of course for the minister in carrying out his role of overseeing the productive development of its resources.

I will refer you to another item in your kit. It is one page, on the right-hand side, entitled "Requests for Value-for-Money Audit on WCB by the Ontario Provincial Auditor." In this we make the case that this is an important step to take in terms of achieving a higher standard of accountability to the board's stakeholders.

Mr Chairman and members of the committee, we have presented you with important recommendations today. I hope we now have some time to pursue in detail your questions concerning these proposals.

Mr Offer: Thank you very much for your presentation. I obviously have not had time to look through all of the documentation, but certainly look forward to doing that in the next while.

I understand your position dealing with the fundamental change that has gone on with the WCB system. I think what you are saying is let's just stop and let everyone who is there work through some of these different policies, this framework, so we can maximize efficiency instead of continually putting on a new fold of change so that everyone steps back and tries to regain.

If that is the position, and I understand that and certainly have a great deal of sympathy for it, you might want to expand on why you would want a value-for-money audit at the same time, when you are asking the system to just stop in terms of reform and get used to the system and work out all the kinks in the area. I wonder if that type of request—again, one which I am not opposed to—might not be more informative if the board were able to do exactly what you have asked, and then possibly a year or so down the line look again at the value-for-money audit.

Mrs Andrew: I do not really understand your contention that a value-for-money audit would somehow prevent the board from actually consolidating the change it has had

up until this time. It seems to us that in the past change happened very quickly. It happened, I think, out of a conceit to do something good for the system, but the outcome was rather unfortunate.

Our position in terms of this value-for-money audit is to ensure that any future changes are well thought out. Just overhauling systems and organization structure and all those things tends to be very destabilizing for an organization. You need to think very carefully before you take these steps, because it has an effect on the staff at the board and the way they perceive their roles, whether they feel they are threatened in some way. That in turn has an incredible impact on how they deal with the client. There have been periods of time when the staff have practically barked over the phone at some of our members because they are just unhappy.

We are arguing that we take time now to assess where we are at and have the Provincial Auditor in to do the value-for-money audit, because we feel there are considerable dollars in the system and it ought to be able to serve the employers and the employees somewhat better than does now.

Mr Offer: I know Mr Cleary has a question, but if I might, we are not at odds with this type of request. My question was just a matter of clarification—I do not necessarily want to restate the question—that a value-for-money procedure might be very useful after a certain period of time has elapsed when there has been no new change in the system, and allowing all those within the system to get used to the system and maximize its efficiency. I recognize what you are saying.

Mrs Andrew: Timing might be an issue, but we really think the value-for-money audit is long overdue, because the system is taxing our members for considerable sums yet they are not getting service. Many workers are not getting service, and levels of dissatisfaction are very high.

Mr Liversidge: Just to follow up on that point, since 1984-85, we really have experienced an unprecedented scope of change in the workers' compensation system. There have been three major amendments to the Worker Compensation Act. Some would argue that parts were good, and some would argue that parts were not so good. There has been a massive restructuring, which we have highlighted briefly, of the actual administrative superstructure that is set to deliver those programs in that act. Again, some would argue some of that was good, some was not.

Actually, we have seen over the course of this five or six years a lot of good ideas germinate at the WCB, a lot of good processes put in place, and then very quickly move on to another one and another one, and another policy or another administrative approach. We think it is time to allow the system to set a bit and to allow for good management to take root, and to take a benefit from that.

We think the Provincial Auditor can assist that management process, as setting out the initial expectations. The Provincial Auditor's objective is to assist the Legislature in holding the government and its administrators accountable by reporting to the Legislature on the quality of the administration's stewardship of public funds. What we

ant to see is good management, and a means to measure it. Maybe in a few years an auditor's report should be done, but we also think one ought to be done now to see what the problems are as they exist right now with this very extensive type of audit the Provincial Auditor is capable of doing in a very unbiased way.

Mr Cleary: Our office has been under the impression that the system has improved considerably over the past number of years, and you partially touched on it and you referred to putting on the brakes. How long do you think those brakes should be applied? How many months to let the staff training, etc, settle?

Mrs Andrew: At least time to do the audit and give the administrators an opportunity to formulate whatever plans they may have for the future. I do not think they would leap in and make changes right away without having the necessary information at their fingertips, and we think the provincial value-for-money audit will provide some of those answers.

\$20

Mr Cleary: You must have an idea how long that would take.

Mrs Andrew: It is a big job.

Mr Liversidge: There are an awful lot of loose ends at the WCB right now. There are an awful lot of immediate problems. There are some critical problems. I would think at the very least you would want to see a halt to the development and initiatives of certain new programs. We are not trying to stop all the initiatives under way; that is not what we are suggesting. We are saying to allow the initiatives under way to bear fruit. There are an awful lot of balls in the air right now and it takes a masterful juggler to keep them all going without dropping anything. I do not think we should throw a few more in.

Mr Arnott: Mrs Andrew, can you tell me to what extent the Provincial Auditor in the past has turned his gaze on the Workers' Compensation Board?

Mrs Andrew: To my knowledge, it has been strictly to examine the financial statements of the board.

Mr Arnott: Is that all?

Mr Frame: Judith, I think I have some information. I do not have it in front of me, but I believe it was in the earlier to mid 1980s the last time this sort of analysis was done.

Mrs Andrew: But not a value-for-money audit. That has never been done. To do that kind of thoroughgoing audit is a relatively new concept in terms of the Provincial Auditor anyway, but on a usual basis, they examine the accuracy of the financial statements.

Mr Liversidge: Actually, there was a call placed to the Office of the Provincial Auditor to ask, "Has this ever been done?" "No." "Well, why not?" "We have not been asked," I think was the answer. We are trying to encourage the committee and the board and the ministry to collectively ask.

Mr Jordan: I think you said there were approximately 300 cases ahead of each—was that this group?

Mrs Andrew: That was the previous presentation. Was that about the case load?

Mr Jordan: Yes. How do you respond to that from your point of view?

Mrs Andrew: I really do not have the experience to know how many cases a case worker could handle, but it sounds as if they are overworked—

Mr Jordan: And the morale is low.

Mrs Andrew: —and some of these things have to be examined. That is basically the position of our group.

Mr Jordan: What comes to my mind is that in the constituency office, if someone is having a difficult time getting correspondence returned or getting a call returned, then we assist him and we get very prompt attention to the matter.

Mrs Andrew: I think you are right. There are some firms that have actually contracted consultants to get assistance with their WCB cases, just to find out where the case is at, whether there is going to be rehabilitation and what is going to happen. It tends to happen that when someone phones, that file gets moved to the top of the pile and somebody else's file gets placed further down.

Mr Jordan: So it could be that a management study is required, or more staff.

Mrs Andrew: Yes, I think so. Now I am speaking for the small business sector. I represent the Canadian Federation of Independent Business in this coalition on workers' compensation. Small business people, of course, have not got the time and the opportunity to keep calling case workers, so their cases, I would expect, drop to the bottom of the pile fairly often.

Mr Liversidge: One very important observation is that—I do not know, maybe it is but maybe it is not—the solution to a case load of 300, which I think is a high number, probably twice what it should be—

Mr Jordan: I think so.

Mr Liversidge: The solution to that is the deployment of additional resources. Our position is that the solution to that is employment of better management, because if you look at the growth of the Workers' Compensation Board as an agency, it has pretty well doubled in 10 years. I would ask, have the service levels improved an equivalent portion? Obviously not, or this committee would not be sitting and examining the question.

Again, we return to trying to get a sense of the root cause of that. Why are the case loads so high and why are there so many appeals? Why are there so many inquiries? Why are there so many complaints? It would seem to me the answer is not to fast-track disputes but to eliminate disputes in the first instance.

Mr Dadamo: In the Windsor office, I have noticed some change in the last little bit and I have also had an opportunity to tour and to meet some people and to talk to some people and visit an area which I have never gone to. There has been some change, but I still have some difficulties with the system when people have to camp out in front of the office for two or three days in order to make a statement. I feel there are problems there.

If you could change a couple of aspects in terms of service immediately, what would a couple of those things be?

Mr Liversidge: Not so much changing things but simply applying some of the principles, the foundations of which have already been laid out. Windsor is a good example. Perhaps one of the reasons you have noticed an increase and improvement in the service levels in Windsor is that the Windsor area office has itself gone through a bit of structural change by importing what is known as the integrated service unit concept to case management.

This was a concept floated in the mid 1980s, 1986 and 1987, an idea that got the full support of this council. We thought, where there was a multidisciplinary, integrated approach to service delivery, nothing but benefit would come from that. The problem was whether there was an ability for that to take root, because layered on top of that you had almost daily, frankly, new policies, new procedures, new processes, and an individual can only absorb so much.

I think that is the problem. It is not so much a structural problem but just basic, sound management in allowing better training of the individuals to ensure they have the tools and the capabilities to do certain things, a capacity of the system to ensure that there is an upgrading type of approach of individuals and the most effective deployment of skills to task.

One thing that there is not an absence of in the Workers' Compensation Board is dedication. I think the employees of the board are committed. They certainly want to do a good job and they certainly try to do a good job, but if you do not give them the tools with which to fulfil their task, they cannot succeed.

Ms S. Murdock: This is to Mr Blogg and Mr Frame, because I am from Sudbury and I am very familiar with mining and with the construction industry. Both industries are high-risk, and I was wondering what your experience with the board in terms of your types of claims would be, speedwise and in terms of the kinds of benefits, etc. Do you represent workers? Does your organization—I guess I am asking another question here—act as an advocate for your group, or is it a one-time lobby group to try and change things at the board?

Mr Blogg: I will start first I guess, since you are from Sudbury. My group, the Ontario Mining Association, is an advocate for the employers to the Legislature.

Ms S. Murdock: Yes, I know.

Mr Blogg: What I do is try to assist our member Workers' Compensation Board specialists in dealing with their problems at the board. To answer your question directly, their main problem is time line in getting answers from the board. It just takes so long for them to get answers from the board, in part because of the case load and in part because of changes of adjudicators on claims. In the middle of a claim, you have a new adjudicator, and that causes some problems. As far as service delivery is concerned, that is where our members in Sudbury have the most difficulty in trying to get consistency within the adjudication branch, so that they can get quick decisions that are accurate and complete and concise. They may disagree with those decisions, but they can at least understand where they came from.

Mr Frame: I certainly agree with what John and Le have had to say on this. I do not need to repeat it, only I say that employers have a double function, not just working through the adjudication function but the revenue side as well, and the revenue side can be more onerous. It has not been updated like the adjudication system has been. It is in the process of being updated and there are plans to update it, but there are many problems related to the revenue side. I probably hear more problems related to revenue than adjudication.

1630

Mr Waters: In your statement you gave us, you said at one point, "The system's costs are running out of control while the levels of dissatisfaction with the system have increased at an equivalent rate." Can you expand on what exactly you mean? It is on page 4, the bottom of the first paragraph.

Mrs Andrew: Right. I was just going to direct you to some of the cost information that was contained in our July 1990 newsletter. It is on the back page of that newsletter. One of the charts there was blown up for you in the kit.

We had some actuarial analysis done on the costs of the workers' compensation system and we found some very telling things. The actual number of incidents that the board handles on a year-to-year basis has really increased less than 50,000 over 10 years, which is not a very large increase given the growth of the work force in Ontario, but the cost of handling those claims have gone up 153%.

We show here in pictorial form the unfunded liability and the whole financial structure of the board that shows the unfunded liability continuing to grow. That disturbs employers, because they know that even though they are paying something like 20% of their rates towards the unfunded liability, they are still on the hook for paying all of these costs which represent the difference between the board's assets and its liabilities, its obligations to pay compensation to injured workers. So that represents future assessment premiums to employers.

The third chart there shows the rate of increase of assessments. You can understand that if assessments had remained relatively level, the unfunded liability would grow because costs were going up, but the assessments have gone up quite dramatically as well. So employers are paying considerably more and we are still not paying the bills. From what we can tell by the various reports given to the Legislature and media reports and so on, workers are not pleased with this system, and certainly employers are not pleased with the system, so the statement on page 4 is to draw the comparison to the fact that although a lot of money has been pumped into this WCB system, it still is not satisfying anyone.

The Chair: The time unfortunately has expired. Thank you to the Employers' Council on Workers' Compensation. We appreciate your coming and the time you spent preparing this. You will undoubtedly be notified, as soon as it is available, of the report that is made.

If there is anybody who is having difficulty hearing what is being said, please say so and we can tell people to

Speak up. People who have just come in, have access to the coffee pot or juice or other beverages that are there.

ONTARIO FEDERATION OF LABOUR

The Chair: The next people we are going to discuss this matter with are the Ontario Federation of Labour. I would ask you to come up, have a seat, identify yourselves so that we know who is talking to us and present your material, if you can, within 10 or 15 minutes so we have time for the discussion.

Does everybody have a copy of the submission? Good. Yes, sir.

Mr Paré: Like you say, I can introduce everybody. My name is Jim Paré and I am the director of organization services at the Ontario Federation of Labour. With me are Ralph Carnovale, a staff representative with the Canadian Union of Public Employees, Norm Carriere, a staff representative with the United Steelworkers of America, and Dennis Schweitzer with the United Transportation Union.

We have distributed this brief. I guess everybody has one. On behalf of the 800,000 affiliated members of the Ontario Federation of Labour, I would like to thank the standing committee for input on the issue of workers' compensation service.

I would like to take a few minutes to touch on some problems that we see have some viable solutions, but we are not going to get into a lot of detail and we hope to get into some detail when we answer your questions.

One of the problems we see is the area of staff problems. Deep staff demoralization is pervasive at all levels, particularly among the front-line staff. Confusion, bitterness, cynicism and very high stress are the most common descriptions of the board's working environment. Most adjudicators feel their case loads are unmanageable. The technology they must use is unreliable and, in many cases, unsuitable for their tasks. Threats against board staff are more prevalent from people from outside the board than at any time in the past, necessitating special security measures.

Staff turnover is alarming. The average length of service of the board's claims and rehabilitation staff has dropped from around five years in 1987 to approximately 12 months present. In Ottawa, for example, the average service of rehabilitation staff is about eight months.

There are some problems which can be found all across the province with regard to the servicing of injured workers, and we can break them down generally into basic operational problems and then we can break them down to the quality of decision-making.

Some operational problems include phones that are answered by machines and calls that are not returned promptly, letters neither acknowledged or eventually answered and lengthy delays in decision-making, especially in occupational disease cases. We will get to that later.

In the area of quality, it appears that the board is moving towards answering its calls and letters better. However, this seems to be at the expense of quality. Basically, instead of doing its own investigation of claims, the WCB expects the worker or the worker's rep to bring forward the evidence in more difficult situations. If this is not done, often the claim is deemed "abandoned."

Our solution to the problems in this area is that the board should provide prompt service and response to workers without sacrificing quality. The board should develop appropriate service standards, including standards for proper information gathering regarding claims. Answering machines should only be used after hours or for short work overload periods. The normal expectation should be that the phone is answered by a human being.

The key problem area we see is vocational rehabilitation. There is a broad-based consensus for the charge that injured workers are now receiving virtually no meaningful vocational rehabilitation. The board's rehabilitation strategy is a dismal failure and the early intervention requirements set out in Bill 162 are not being met or are being met with a single phone call, which is recorded as a section 54a contact.

Board figures put the average rehabilitation case worker load at just under 80 cases. This is 60% higher than the case load recommended by the Majesky-Minna task force on vocational rehabilitation.

The board appears to have adopted a tacit policy of returning injured workers to a job-ready state before cutting them loose, a policy which runs counter to the generally held belief that rehabilitation should mean returning workers to productive employment as nearly as possible to their pre-accident earnings and working conditions. Older workers have been systematically abandoned as "unlikely to benefit from a rehabilitation program" and thereby reduced to permanent poverty.

One of our solutions is that there should be some effective and swift bipartite consultation on a new approach to rehabilitation. This could include a study of existing practices and proposals for different ones. The worker's rehabilitation should be focused on long-term, dignified employment and not trapping the worker in various job ghettos.

Another problem area we see is claims adjudication. The adjudication strategy involved specialization of functions in adjudication, plus apparently centralization of some complex adjudication in Toronto. Overall, it seems to us that the quality of adjudication has suffered.

We believe this also needs some bipartite study and consultation. The key here is giving more responsibility and respect to the adjudicator's role and reducing specialization and fragmentation of the job. As stated previously, the turnover of adjudicators has been very high and morale has been very low. It is important the adjudicators be granted their democratic right to organize themselves in order that they can bargain for better working conditions. Adjudicators' independence will be enhanced with the security offered by the support of the rest of the bargaining unit when controversial decisions must be made. This security and the ability to address working condition issues, we believe, will lead to increased quality and impartiality in the decision-making process. It is imperative that WCB adjudicators be included in the Crown Employees Collective Bargaining Act, and that would take a legislative amendment.

1640

In the area of occupational disease, workers are dying and it is taking the WCB years to decide if the death is

compensable. This is leaving hundreds of families not just grieving but suffering financially.

We believe the WCB must make a priority of occupational disease. This includes more resources to evaluate claims and studies, and strict time lines on making decisions on claims. The board must also add more diseases to the schedules, in particular mesothelioma, which was recommended by the Industrial Disease Standards Panel.

In general, the WCB was created in 1915 as a workers' compensation board. Over the years, the emphasis has shifted away, so that today workers are not respected or properly served.

It is important that legislation be passed formally creating a bipartite board, so that in the future, no matter what government is in power, fair policies will be bargained by the two stakeholders.

Finally, the labour movement is happy with the creation of the vice-chairs at the corporate board, the appointments of Odoardo Di Santo and Brian King, and the general direction towards trying to solve servicing problems, with less emphasis on policy development.

There is no question that legislative change is required to clean up some of the anti-worker sections of the bill, particularly the heinous deeming provisions of Bill 162, but noticeable progress has been made. We realize this government will likely have only one chance to reform the act and we look forward to input into the contents of the new bill. We hope it can be tabled by the fall, before many more injured workers and their families suffer under the provisions of the current act.

The Chair: Are there any other comments by other members of your panel before we get into questions? Brief ones, please.

Mr Carnovale: Speaking on behalf of CUPE, we very strongly recommend that the Crown Employees Collective Bargaining Act be amended to include the claims adjudicators in the bargaining unit, which is currently at the Workers' Compensation Board. To that end there was a letter sent to the Premier earlier this week by the present Ontario division, asking that such amendment be made as quickly as possible.

Mr Schweitzer: I represent railway workers throughout the province and I deal with all the regional offices plus the head office in Toronto. I would like the committee to know that in my opinion the head office in Toronto is too big. It is the most unwieldy and unmanageable of the board's offices, and the one that I find most difficult overall to deal with. It touches all of the areas, the service, the quality of adjudication, the time lags. Just the sheer size of it is intimidating.

Mr Carriere: I co-ordinate the Steelworkers' compensation. It represents about 80,000 workers and we have a number of full-time compensation officers. We have real concerns about how the compensation board, in terms of delays of claims and processing claims through the appeals procedure, seems to be deteriorating as opposed to improving.

There are a number of delays. There is the initial delay in phone calls, as we said in the statement about the answering service, which is just not acceptable; delays getting

files which are requested and take three to four month delays after your requests for appeals and you have to issue two or three letters; after you have had decision including the Workers' Compensation Appeals Tribunal delays in getting the decision, if it is allowed, applied. People, old workers with probably a very short time to live, are waiting for this and nothing happens. We really have some concerns about the delays.

I was interested in what the panel before us spoke about because I agree with what was said by the employees' council, that it is not a good idea to have a speedy (fast-track) appeal system that does not work, but the way to reduce the numbers. That is where we are at, and that falls strictly on the shoulders of those people who were making that comment. We are really in support of that one.

Mr Arnott: Getting back to the issue of service, appreciated the comment about setting standards for response times, etc. When I call the Workers' Compensation Board and I am told someone will get back to me in 48 hours, I take it with a grain of salt. But they appear to have standards. To me, it almost seems that they have standards but they are not meeting their own standards. Would you concur with that?

Mr Carnovale: I think that, depending on which adjudicator you speak to and which office of the province you speak to, it can be anywhere between 24 and 72 hours depending on what that individual does. One of the things we were kidding about is that we happen to leave our home phone numbers with people to make sure they get in touch with us, and we are getting phone calls at home at 10:30 at night at home, that kind of stuff. There appears to be no consistency to the application. Saying 48 hours is fine, but when it turns into five and six days later, the 48 hours is meaningless.

Mr Arnott: I certainly concur with your contention that there should be a human being at the end of the telephone line. I think it creates so much more frustration. There is not, if you are talking to an answering machine. There is no question about that.

Mr Paré: Especially if you are having difficulty making your mortgage payment.

Mr Arnott: The other question I have is that I am surprised when the board comes in and talks about what it is doing to improve service levels later on in this exercise, it is going to tell us that a certain number of cases are handled without incident, without problem, 80% or 90%; I do not know who they will claim. To me, the ones that are not handled expediently that come to my office often involve a situation where, for example, if the worker was working along and got an injury—he may be a very dedicated, hard-working guy—he did not immediately report it to his supervisor. He went home that night and thought, "It is a little sore today but hopefully it will be better tomorrow." He wanted to go into work the next day, so he did not go to the doctor immediately, that sort of thing. Then there is no what the board calls continuity or whatever the terminology is.

How can we better educate the workers before they are injured on how the board operates, so that they know the

immediately have to report to their supervisor and immediately should seek medical attention?

Mr Paré: In unionized workplaces we certainly do our best to keep our members informed about the sort of the lines that are involved with the WCB. I do not know how you would change the system in an unorganized workplace. We cannot expect the board to be mailing out notices to every person who works in Ontario but I think, maybe through the employers' system, they continue to remind employers to let their workers know there are some new lines. Whether that would actually take place and whether that notification would happen would depend on the employer obviously.

Mr Jordan: I was interested in the regional office. What level of claim can they deal with, or can they?

Mr Schweitzer: All levels, except for the complex cases. Complex cases deal with things like heart attacks—we are having amputations sent over to complex case units—deaths. Regional offices can deal with everything else. In fact, in my opinion, the regional offices can deal with everything, but that is not the way they do it.

Mr Jordan: That is my question. Is the regional office passing it back to head office here in Toronto when it could be dealt with at the regional level?

Mr Schweitzer: No, I do not think that is so. I think they have criteria for what type of claim has to go to the complex case unit, and also there is something written for their own people in regard to a claim that is reopened or a claim that is delayed so long that it has to be shipped out. They have their criteria, whether we agree with it or not. I do not particularly agree with it. I will give you an example: an amputation in Sudbury within the last two weeks of one of our trained persons. It is a straightforward case. She was injured. The train ran over her leg. It is payable, no ifs, ands or buts, and they have a regional office right in Sudbury, they shipped it to complex cases. To me that is kind of silly.

650

Mr Jordan: What about the employer? What type of follow-up does the employer do? It is his employee and he has been paying workers' compensation. Once the paper work is done and it has gone in, is there any follow-up by the employer?

Mr Schweitzer: How much time have you got? You want to talk about one of my particular employers, Canadian National Railways. They have been rated as the safest railway in North America. Their claims reporting leaves a lot to be desired. They are a federal employer; they are a schedule 2 employer. They do not believe that parts of the act pertain to them, like section 54b, the reinstatement part. We have all kinds of problems with them. They would like every injury to happen, to be allowed to be paid and get their worker back to work as would everybody, but I do not think their follow-up is the greatest.

Ms S. Murdock: In your presentation, there is one statement that I am hoping would not be misconstrued by anyone who would be likely to read it. It is on page 10 and it says, "We realize that this government will likely have

only one chance to reform the act." I would not want anyone to think that this means we only have one term. I know you mean that we would probably amend any portion of the Workers' Compensation Act—one sitting.

Mr Paré: I will always consider one sitting or one term as a government, hopefully—

Ms S. Murdock: No, you do not mean that.

Mr Paré: No, I do not mean that.

Ms S. Murdock: I did not think so. I just wanted to clarify it for the record.

The Chair: I am glad you got that cleared up before anybody else asks questions.

Mr Wood: First of all, I want to thank you for the presentation. It is a very good document. On page 8 you refer, under (c), to solutions. I am just wondering if I could get you to expand a little bit. You are talking about strict timetables on making decisions on claims. I would like to add a little to it. In the workplace I was in before I was elected as a member of Parliament, there was a 30-day period. If there was a disputed worker's compensation claim that lasted more than 30 days, then the sick leave kicked in and they could take as long as they wanted to appeal. There was no emergency in it. People were getting their pay. I am just wondering if you would expand on what you were just saying.

Mr Paré: In the workplace that I come from, you would get paid from day one because we had that arrangement in the collective agreement until they got paid, but in many places, especially non-union workplaces, those provisions do not exist, so the worker is out on the street waiting for a decision to be made on his case and there is no money. I do not know how many people in this room could go three or four months without any wages, whether they could continue to pay their mortgage. In the workplace you come from they had a 30-day kick-in. The one I come from started right away with a sickness and accident benefit plan, but in fact many workplaces do not have these kinds of provisions. So that is why we would like to see stricter timetables.

Mr Carriere: Let me follow that up. It is worse than that. That is where the question comes about industrial disease, whether the employee can take a chance, a risk, because most of the coverage workers have under an insurance program have that clause that says non-occupational accident. In a lot of those cases, workers who feel they have an industrial disease takes sometimes two, three and four years to get determined. If they make a claim, the insurance company does not pay them because they are claiming it is an industrial disease. If that happens, there is zero money for that employee, for that worker, and it could be two or three years.

If he loses the claim at the comp, it is hard to come back on sickness and accident benefits because the medical is clear; he has a legitimate disease. He cannot get it while he is arguing comp because they claim it is industrial, that is what he is saying. If it takes four years to settle it and you lose, it was obviously insurable. By that time, most of

those insurance people say that you have one year from the time they started to get your claim so that they are out.

Mr Klopp: With regard to the occupational disease again, if you are a worker, is this the same idea? If you are working at an asbestos mine and then you leave the asbestos mine and a few years later a doctor finds out you have lung cancer, is this part of this occupational disease thing? Because that is very frustrating. Not only people I know, but also good friends are going through this state right now and it is very frustrating. What time frames do you mean when you solution tight time frames? Do you have a number at all or just get it better, period, 30-days?

Mr Paré: We have not really sat down and put any specific time limits on it. What we would like to see is some more resources applied to the issue so that we can make the evaluations and make some decisions quickly.

Mr Klopp: This question has been around a long time.

Mr Paré: Ralph just wanted to say something.

Mr Carnovale: One of the things I think should be clear—and with all due respect to the members around these tables—is that maybe you should clean up your own backyard first. CUPE represents a number of crown employees and one of the biggest problems I have, and I negotiate on behalf of the Ontario Housing Corp, is that it only has six weeks. If WCB does not make a decision within six weeks, you have got to wait and you wait for as long as it takes. That is one of the bigger problems.

When you are looking at the kick-in times and whatever, start looking at your own crown agencies first, see what your own crown agencies are doing, and then go up and tell the rest of the employers in this province to follow suit. It is the old backyard syndrome, but unfortunately that is where you are falling down. You are falling down in there and you are also falling down in your modified work programs and reinstatements. You have got the worst record as crown agencies of any employer in this province.

Mr Dadamo: Very quickly, years ago I used to say that WCB here in Toronto was top heavy, nobody listened. Now I am an MPP and sitting on this board, I hope people will heed that.

I wanted to make more comments and I wanted to ask questions. I think that 60% of the work done in my Windsor office is workers' compensation. There is no question about that. I have called the adjudicator here in Toronto on two different occasions and told him who I was. He said he would call me back within 48 hours. There were no phone calls. What I am thinking is that the first impression is always the one that is long-lasting.

Maybe we should be pushing for them to get rid of this 48-hour business, because I do not think they call you back within 48 hours. Maybe they should be saying, "I will call you back in 7 to 10 days," or something. Do you think that maybe we should be hiring people to answer the telephone so that when someone is calling and he is hurting, he should have someone who is alive who can talk to him. Even if they cannot answer their damn questions, maybe they can refer you to somebody?

Mr Paré: That is exactly what we are saying.

Mr Waters: Training of adjudicators: I wanted to ask a question on that and whether there should be constant guidelines for adjudicators in dealing with cases, whether you feel the training is adequate.

Mr Paré: I will let Ralph take this because he works at the board.

Mr Carnovale: I had the experience of having worked for the WCB for 14 years, including the claims adjudicator position. I think the training has come a long way from where the training was in 1974 when I started, where we were handed a bunch of form 7s and told, "Here, adjudicate."

As I currently understand, there is about a 13-week training program at George Brown College here in Toronto and at Cambrian College, I believe, in Sudbury and some other areas. Training has come a long way. The difficulty is that you still have the mentality of saying, "All right, there is your desk," once the training is finished, "Go do it," without any concern, without any regard to saying, "Wait a minute. There is a fold-in period, there is a phase-in period here where we have to be able to sit down and look at the response we are getting."

There has to be a follow-up and I think that is one of the criteria that is missing. You cannot just put a person on a desk, hand him a computer and a phone and say: "Okay, you are an adjudicator. Now go adjudicate."

Mr Paré: The case load is very heavy, and you cannot expect quality decisions from people who are just handling too many cases.

The Chair: I am sorry, we have got to move on because time is fleeting.

Mr Cleary: I know the Chairman is in a big hurry anyway, but first of all I would like to thank you for your presentation and I must say that over a vast lot of years have heard many of your concerns before. But I was under the impression over the last few years—and I will strictly talk more about the east than anywhere else where we deal in my office, and it happens to be in the Cornwall area—that we had felt things had improved a bit, not a lot but a bit. We just had a group in here a bit earlier and they had suggested that we just kind of put things on hold and let the system get organized a bit.

Now my question to you gentlemen is, if you had a wish list, what would your priorities be?

Mr Carnovale: I think the case load of the claim adjudicators must come down. The case load of the case workers, who I do not think should be called case workers—they should go back to being called rehabilitation counsellors, which is what they are, should come down and come down significantly, more than probably the claims adjudicators. Those two things would be the two primary situations that I would want rectified first.

1700

Mr Schweitzer: One of the biggest frustrations I see that could be easily solved is the timely decisions and the response within the time frames they have set themselves. I deal full time with workers' comp and that is one of the biggest frustrations we have. Whether it is 48 or 24 or

weeks, as long as you tell me you are going to call me back with an answer, I expect you to call me back.

Mr Cleary: The gentleman had just said a bit earlier he gets called up till 10:30 at night. He is lucky that is as late as it is.

Mr Schweitzer: That happens regularly.

Mr Cleary: I know. Thank you.

Mr Carriere: That is simple. The worst is that workers who are entitled to compensation ought to receive their benefits within a reasonable amount of time, which I would say about two weeks. It is as simple as that. It is criminal for workers to lose homes and property and have breakup of marriage and families when they have legitimate claims, because of the system.

So the wish list is that where they brag, "The majority of our cases are done reasonably well," is it something to be proud of that what you are supposed to do, you are doing with most? You say because of that, "Well, the little percentage—that is okay." I think it should be 100%. It is a system. There may be one or two who fall off the track, so that you have to straighten it out.

We have all kinds of examples about what it is, and what happens in this case when workers do not get it. It is really that workers do not get any money and that is not acceptable. So the wish list is to pay everybody who is entitled to compensation.

I agree that the adjudicator has to be well-trained, that they have to cut down completely on the decision review board, a specialist program. We have an avenue there that the adjudicators, rather than really looking at it, just pass the buck. "I will let decision review look after it." All of that process of delaying where you are going to get claims does not help anybody. But the wish is to pay people who are entitled to comp within a reasonable time.

The Chair: You have been very helpful, as have the other groups. We have appreciated your attendance and the work in preparing the material. You will be getting, obviously, a copy of the report when it is prepared. Take care. Thanks for coming in.

UNION OF INJURED WORKERS

The Chair: Next is Mr Biggin, with the Union of Injured Workers. If you have people with you, please bring them up. Please tell us who you are and then proceed with your comments, perhaps 10 to 15 minutes, and then we will be able to discuss some of the issues that you raised.

Mr Biggin: My name is Phil Biggin and I am the executive director of the Union of Injured Workers. I have with me today the president of the Union of Injured Workers of Ontario, Francis Cuccia.

The Workers' Compensation Board was set up as a result of a study by Sir William Meredith prior to 1914. The basic idea that Justice Meredith came forward with was that the injured workers would have security of payment and, in return, they gave up the right to sue the employer. This was the historic compromise, but over the years we have seen this system eroded so that now we consider it to be an employers' compensation system.

The Union of Injured Workers was founded in the early 1970s by workers who wanted, essentially, to ensure that we return it to a system where workers are justly compensated. We called for either job security or full compensation. We called for automatic indexation of pensions. We called for abolishing the Workmen's Compensation Board doctors, whom we considered to have a conflict of interest, and we asked for stricter penalties to ensure that health and safety were administered in the workplace so that injuries would be reduced rather than increased.

Our organization is well known to you legislators. We have been very active throughout the years in all of the public hearings around workers' compensation. Our workers came to Queen's Park on 1 June 1983 to protest Professor Weiler's proposals and at the time, the government was smart enough to set those proposals aside. We also came to the government after Bill 162 had been tabled in the Legislature and forced the government to hold public hearings.

Today we are here to talk about the service delivery at the Workers' Compensation Board. Our case load is extremely high and over the last couple of years, our case load has doubled. Part of the problem that we see at the compensation board is with primary adjudication.

But before I get into some of the specific problems that we have, I want to state that first of all we are very happy that the Premier has appointed a new chair and vice-chair at the compensation board. We see this as a very positive step. However, there are many people at the compensation board who we consider were responsible for the degeneration in services over the past five years in particular. These people are as responsible as Dr Alan Wolfson, who was dismissed and has gone his way. These people are still at the board and we feel very strongly that they will have a role to play which will not be in the interest of workers.

Primary adjudication: Over the last five years and in particular in the last year, there has been a dramatic increase in delays. In initial adjudication, where before a worker was able to get compensation within a matter of weeks, it now takes five to six months. If you have to go to decision review or to the hearings level, it takes another six months of delays. Even with the timely decision-making policy that was established in 1990, it is a 12-week period before a decision must be made. Can you imagine a worker and a worker's family waiting with no benefits for 12 weeks? We have many people in our organization who have been waiting for six, eight and 10 months before they get a positive decision from the board. When they get the positive decision, for many of them it is too late. It is too late because their families have been lost. It is too late because they have lost the mortgage on their home. These are real people whom we are dealing with.

Under Alan Wolfson's regime, the emphasis was on systems, and I have nothing against producing systems as long as the goal of those systems is to assist the people who are supposed to be assisted; in this case, the workers. It was after all, I would remind you, supposed to be a workers' compensation board.

One of the problems we see is transferring files from adjudicator to adjudicator to adjudicator. I have cases that are still going on where there have been six different adjudicators

involved and sometimes more. Each time a new adjudicator gets the file, he has to review that file. Once it is sent to another adjudicator, you have to start all over again, and all the while the worker is waiting for benefits.

1710

Then you have the situation where the file is lost periodically, and this is a very common situation. You would not think it would be in an organization that has imaging, an organization that has the most sophisticated computers, an organization that has all sorts of fancy technology, but files get lost.

The latest thing that we are encountering is that the file has been sent to Downview rehabilitation centre. Why is it sent to Downview rehabilitation centre? It was sent back from the hearings branch because they said that the operational branch has to decide a couple of issues. In the meantime, the file was transferred to a couple of adjudicators and then, accidentally, sent out to Downview. The delays go on and on and on or the medical reviews.

I am very sympathetic to the staff at the Workers' Compensation Board. Many of the staff are fine, and over the last five years I have been disturbed to see some of the more experienced staff leaving the board in frustration, so that now we face a more inexperienced staff. I want to see a system develop whereby everybody wins; the staff get fair treatment and the workers get fair treatment. This is not the situation.

I have a case outstanding today where the person was brought in for a pension assessment. This is a very long-standing case and the doctor said, "I have reviewed the file and your pension is confirmed at the 10% level," even though 10 years earlier, another doctor at the board had said that he wanted to give an increase of 5% in the pension. When we went to see the pensions adjudicator, the pensions adjudicator said, without the file before him: "No. There is nothing in the file to warrant that."

We just had the case reopened and one of the most experienced adjudicators sent us a letter. The letter stated that the worker had had no complaints for the last 12 years. This worker had left the country on a couple of occasions. When you look at the file, the worker had been back two times on temporary total benefits. Now we have an adjudicator telling us that there is no evidence in the file that the worker had complained over the last 12 years, even though the last time that worker was on temporary benefits was in 1989.

I would like to see a board which is responsive to the needs of injured workers, makes timely decisions and gets benefits out to the workers. We do not want anybody to have a free ride. We are not asking that the person who may be fraudulent be given benefits. No, that is not what we are asking. We are asking that the workers who are entitled to the benefits get those benefits in a time when they can use them to bring bread and butter to their families' tables. This is not the situation right now. It is a disgrace.

I told Dr Alan Wolfson a year and a half ago: "We are not disputing the fine technology that you are bringing to the board. We are not disputing the restructuring that you are doing, the decentralization. But maybe you are doing too much, too fast."

I heard the employers say that they wanted a cooling-off period. That is fine with us, as long as that cooling-off period does not involve a tying-up of benefits. If we do not have the benefit services to injured workers improved, then we will resume the militant action that you saw from the Union of Injured Workers year after year after year until we got the automatic indexation of the permanent pensions in 1985, until we stopped the Tory government from putting forth Professor Weiler's proposals, until we forced Greg Sorbara and then Premier Peterson to hold public hearings by storming the Legislature. Our workers are angry, and justly and rightly so. If we do not see the changes and significant changes, we are prepared to move again. But we are very optimistic that these changes will be forthcoming.

Mr Waters: Time lines have come up pretty well every conversation we have had here this afternoon. Do you feel there should be actual written or spelled-out time lines for the different steps, going through the whole adjudication process?

Mr Biggin: Yes, I see no reason why, when the form has been completed by the person's physician and the worker has made a report, benefits cannot go out even if the employer is objecting to the claim.

If the employer objects to the claim, it goes to investigations. Investigations is so burdened with case load—that case loads at the board are phenomenal—and investigations is so bad that it is a six-month delay. So our recommendation is that the time line should be extremely short. If the evidence is there, from one party or the other, unless the employer can produce evidence that there is something fraudulent, and really the onus is on it to do that, the benefits should be paid out immediately.

When I was on workers' compensation—I was injured in 1974—I received my first cheque two weeks later. Why can we not have that kind of service delivery now?

Mr Waters: The decision review branch—it has come up a couple of times about just abolishing it. What would your feeling be on that?

Mr Biggin: I am not in favour of abolishing levels of appeal because it is the opportunity that the person has there is a difficulty. When you object to an adjudicator's claim adjudicator or pension adjudicator's decision, it goes first back to that adjudicator to reconsider and then goes to decision review. In fact we could improve the training of the primary adjudicators to the degree that we would get the right decisions the first time, or better decisions the first time. The problem is now that you have to go to decision review to get bad decisions reversed and then, if those decisions are not reversed there, you go on to hearing.

There are an awful lot of mistakes made at the primary adjudication level and I think we have to look at that. I am not prepared to come out and call for the abolition of the decision review specialists until such times as the primary adjudication level has been addressed specifically. Anything that speeds up the worker getting benefits, yes.

Ms S. Murdock: First of all, I want to thank you for coming in, and yes, you have made your voices heard.

because 1 June has been declared Injured Workers Day, so now there is a big demonstration here on Saturday.

Mr Biggin: We call it a celebration this year.

Ms S. Murdock: Demonstration or celebration, I will leave there.

I wanted to ask—and it has not been mentioned today—it is something that has been brought to my attention and I know that you advocate on behalf of workers—what your experience has been with the assistants and the adjudicators and the difference between them.

Mr Biggin: The problem that I have and that people working with us have with the case worker assistants is—well, for me it is a totally frustrating experience because you cannot get any specific information. Their job is to assist the adjudicator in collecting information. When I am calling the board, I want information, and so they refer me back to the adjudicator or they say I am going to have to get the file. In fact the case worker assistants had the file before them, or had the facts before them and could have a discussion with you, it is fine.

I think the problem there is you are dealing with very inexperienced people. Again, many of the adjudicators we are dealing with today are extremely inexperienced because the old, experienced adjudicators have been driven, I would say—and I do not think I am being unfair—out of the board. The stress levels at the Workers' Compensation Board are absolutely amazing. I could not see myself working in the adjudication, in the operations level at the board. It is a very rigorous job and I have great sympathy for them, but many of the experienced adjudicators have been driven away, so we are faced with inexperienced people.

Now I guess we are seeing another phenomenon, which is people who are afraid to make decisions. They do not know what decisions to make, so no decisions get made. "It's better not to make a decision. It doesn't matter." Then, of course, they are protected because they have got the answering machine, which they do not answer for 24 or 48 hours.

I hate to say this, because I am a long-time trade unionist. I do not believe that I should have to go to a supervisor or a manager to get something that a rank-and-file worker would give me. But I get my results by going to the director of the ISU. It is a sad thing to say, but I think if we have a system whereby everybody goes and petitions the chairman or goes and petitions the directors, we have not got a system that is working.

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Mr Cleary: I would just like to thank you for your presentation and say that some of the questions have already been asked that I would have asked. I have a committee in my area and I work very closely with the injured workers. I attend their meetings, and we do have success. In fact, I am under the impression that in the last few years has improved a bit in our part of eastern Ontario. We have a new gentleman we deal with in the Ottawa office and we are having some success. I will leave it at that.

Mr Biggin: Okay. I will answer you this way. I guess you would have a different interpretation of this. I know the groups you are working with in the east. The thing is that

workers' compensation has become a growth industry. Because there are more problems, there are more people doing worker compensation now that there are more cases. And it is true. If you have somebody in an office, as you have in the Ottawa office—we used to have, six years ago, counselling specialists at the Workers' Compensation Board. Those were specialized people who had a lot of experience. We could go to them and for sure they would solve the problem.

But I can tell you that I had two people in the last two years who were in the operations level who were appointed by the directors of the integrated service unit involved. Because they got sick of talking to me, they gave me a special worker in that section. I made the mistake of commending those workers to Bob Elgie and Alan Wolfson and they were taken out of the operations branch, which shows you the mentality we were dealing with last year and the years before.

I encourage the situation where groups that are advocating for injured workers have specialists dealing with their problems, somebody at the board who you can go in to. If it is a critical problem, they will get you a fast answer. If they cannot get it, they will go and find the person who is going to get the answer. That is the kind of situation I think you have there.

Mr Cleary: You are not going to tell anybody that we are having a bit of success there, are you?

Mr Biggin: I think it is good. With the Windsor office and the success you have had, we should praise people about that, because I think with the new administration they are not going to move people out of operations who are able to perform. Okay? We want to see people who perform and get the job done, and that means getting benefits to injured workers.

Mr Arnott: Mr Biggin, I want to thank you very much for coming in today and presenting your concerns. I certainly share very profoundly what you have said about the frustration when a file is transferred. A cynic might almost conclude that the paper is just being shuffled for the sake of shuffling it. I do not know why they do it, and the frequency with which the board seems to undertake that activity. As you say, you start at square one with each new adjudicator you get to. Do you have any idea why that seems to be the policy of the board?

Mr Biggin: If you want me to tell you why, injured workers started organizing and demonstrating in the early 1970s. The employers became much more sophisticated and they started organizing. There was a tremendous amount of pressure put on the board and the top administration of the board was more sensitive to the employers than it was to the concerns of injured workers, so that it really was in the interest of those people—and there is no great conspiracy about this—who wanted to make sure that benefits were not quickly gotten to injured workers. You did this by reorganizing, restructuring, moving people around. If you want to improve the benefits to injured workers, you restructure, to be sure, but you do not do it so that you are pulling the rug out from under everybody's feet. Not only the injured workers felt that way, but the

adjudicators themselves. Even decision review specialists told me, "This place is impossible to work at right now," and this was two years ago.

We have to have a situation where the people who are adjudicating, making decisions on a specific claim, have the time to review it, and if they have an assistant, people are reviewing that and you are not switching it from person to person because you are so busy restructuring.

We are not against modernization and restructuring. We heartily support it. But do not do it in a way that is going to hurt the injured worker, and I think we can do that. I think we have some good people at the board now at the top who are committed to doing this, but we have to move right down through that structure—not just because you have Odoardo Di Santo or Brian there, King. That is good, but you have to go step by step through the organization and give thorough training to sensitize all of the people at the board, sensitize them about the cultural diversity of our province, about the fact that when you have to go out and work on a construction site and struggle under unsafe conditions it is different than working in an office. You have to have the sensitivity that these are all people. It is a human problem, and that is what has been lost over the Wolfson years. It became a system problem and all of the solutions were system. The people, the workers, were forgotten.

The Chair: There are a couple of minutes, if anybody has any pithy comments.

Mr Wood: It is not really a question; it is a comment I want to make. I was listening to you very intently, and thank you for your presentation. Going back quite a few years ago when the compensation system was set up people would get paid but they would not have the right to sue.

Mr Biggin: That is right.

Mr Wood: Now you are saying that whole system has gone by the boards, and I guess in actuality it has, because I get very frustrated when I find out I have to use my staff in my constituency office appealing compensation claims or getting people to get welfare when my impression over the years always was that you are working and you get paid; if you are hurt, you get paid by compensation or you get paid by sick leave. You should not have to go to the welfare system to do it. It was basically a comment that I wanted to make. Thank you for your presentation.

Mr Biggin: That is a very important point, because the floodgates have been opened and there is a tremendous increase in case loads, but do not let people give you the idea it is just injured workers. The big problem at the board, and the employers should know this very well, is that some employers' advocates are contesting each and every case. They are going into Ford plants, GM plants and reopening all of the old cases. That is going to backlog the system. If we apply for a file, we have to wait eight to 12 weeks to get the file because you have so many people doing this.

We have to return this to its roots. It has to be a workers' compensation system, not an employers' compensation system.

Ms S. Murdock: This is just a comment rather than a question, because it is sort of interesting, particularly have listened now to four groups, two presentations from the employers' perspective and two thus far from the workers' perspective. I have in the past eight months, as parliamentary assistant to the Minister of Labour, learned fairly quickly that actually the complaints by both groups at both stakeholders are not much different. I mean, yes, there is the difference that they have in terms of whether benefits should apply or should not apply, but that aside, in terms of service problems at the board, the complaints are almost identical, and it is quite a statement to make. That is just my comment.

Mr Biggin: True, but I want to remind you it is the workers' compensation system.

Ms S. Murdock: Yes, do not worry.

The Chair: Anybody else?

Mr Arnott: I would just like to make one comment, do not think anyone disputes that it is a workers' compensation system.

Mr Biggin: But it has not been operating in that way for the last five or so years.

Mr Arnott: I do not know of many employers who have been compensated by the system directly.

Ms S. Murdock: There are some employers who would accept peace offerings.

Mr Arnott: Okay.

The Chair: We appreciate your time and we appreciate the input. Take care.

1730

OFFICE OF THE WORKER ADVISER

The Chair: Office of the worker adviser, Ms Tait, Ms Halonen and Ms Melbye. Come on up and have a seat. I know who Mr Halonen is, but you could tell us who you are and spend 10 to 15 minutes, if that long, telling us what you would like to say and then the balance of the time you can spend discussing what you have raised.

Ms Tait: I am Rosemary Tait. I am the acting director at the office of the worker adviser. You have met Jon Halonen, and this is Cara Melbye, who is a Mississauga office worker adviser. She has been with the organization for over five years. Jorma is the northern region manager, who has also been with the organization for the same amount of time.

We would like to thank the committee for the opportunity to make this presentation. I gather a number of other organizations have presented concerns that are similar to ours, so I am going to attempt to not be repetitious. I think you have a copy of our brief. I will try to highlight the areas that we feel are most problematic.

Perhaps, just to spend a second on why we are in a good position to give you some of our experience, over the last five years we have assisted in some manner over 20,000 injured workers a year, either through giving summary assistance, summary advice, or representation in appeals. On the basis of that, we are probably in a pre-good position to identify what are concerns in service

with the system from both a worker perspective and a worker advocate perspective.

Just to provide a background, which other people probably have already done, in the past five years there have been a number of initiatives, both legislative and policy, at the board that are probably responsible for a lot of the servicing problems that have been talked about: two significant sets of legislative amendments in 1985 and 1989 and a number of policy development initiatives, partly given by the establishment of the WCAT, which changed the policy development process at the board from a self-efficient process to more of a precedent-driven process and a process that involves the public in a much greater way.

At the same time, the board was decentralizing its client services operations and was restructuring to integrated service units and was launching new medical and vocational rehabilitation strategies throughout this period, and concurrently introducing several technology innovations, including a new on-line benefits payment system, imaging and electronic mail and voice mail.

The board has an extremely ambitious reorganization plan that I think is responsible for a lot of the servicing problems that have resulted. Service improvements did come through this plan, and the most notable of those is decentralization. Without a doubt, our regional offices have echoed the service improvements that happen as a result of adjudication being done in the area where workers live. There is some role that the workers feel they can play in the management of their cases in general, and their doctors as well, so that is an improvement. But overall in the process of this enormous restructuring and reorganization, we feel very strongly that the board has been unable to maintain a satisfactory level of support for the primary adjudication function, very similar to what Mr Biggin said.

To their credit, the staff overall of the client services division have tried really hard to maintain adequate service levels despite the traumas that many of the staff were going through as a result of these changes, traumas like sudden job insecurity, relocation, unprecedented staff turnover, new policies, new payment systems, automation glitches, all of these problems that resulted from these innovations. However, many of the service impediments remain today and we would like to summarize what we think are the most serious problems. We are also attempting to propose some solutions that we hope the board will look at.

I guess the most dramatic problem is delays in adjudication. There has been a dramatic increase over the last few years in the amount of time it takes the boards to come up with initial decisions. For example, on the submission of a written objection to the operating levels of the board, the interval between submission of that objection and receipt of a decision in response to that has been consistently well over five months in the experience of most of our offices. That is the average time interval. The case-by-case time intervals are much more dramatic than that and we have had delays of well over a year to receive operating-level decisions from written objections.

Some of these problems are compounded by the board acknowledging receipt of correspondence. That is only

done in a few cases these days. It seems to be extremely inconsistent.

When our staff inquire with the board about the status of a case, an objection that we have made, we often find that the objection has not even been assigned to an adjudicator until we finally get through to somebody and raise the status inquiry. It is not uncommon to find that action in response to an objection begins only after the case has been brought to the attention of the integrated service unit director, several reminder letters later.

Contrast this with the service response that we had come to expect in previous years. Usually, we used to get a letter acknowledging receipt of our objection within two to four weeks of submitting a written objection and a decision or answer to that letter within one to three months of submission. So it has been at least a doubling in average times, if not a much more dramatic problem than that.

As you probably know, the board has drafted and implemented a policy on timely decision-making. That was introduced this past November. There could well be service improvements coming out of that. However, in our belief, unless attention is paid to the underlying reasons for the delays, we are concerned that any service improvements attributable to that policy could well be offset by deterioration in quality of decisions. I will give you an idea why.

The timely decision policy seems to address only time lines. It does not look at aspects of the adjudication process that are not within the control of the decision-maker; for example, the time required for investigations, reviews by medical staff, the shortage of word processing support. Implementing a policy which requires that the adjudicator or decision review specialist get a decision out within a particular time that does not address things that are beyond the control of that person is not going to assist the process at all.

The overall solution has to accommodate the reasons for the delays. We think that a new adjudication support strategy is necessary. Perhaps it should include the following components.

Case loads have to be lowered. I am sure we are not the only ones who have identified this. It is our understanding that adjudicators carry somewhere between 200 and 400 cases at any time. None of us can understand how they could be expected to make well-considered and quality decisions in a reasonable amount of time with those kinds of case loads. We would also like to point out that in our experience lower case loads lead to faster turnover of cases generally and often fewer appeals, because the decision is right the first time around.

Staff turnover should be examined. We feel the experience level of adjudicators has decreased dramatically. The reasons for the high turnover should be examined by the board and corrective measures put into place to encourage staff to stay in their positions and gain experience. More training is required, including refresher sessions, case consultation sessions and improved strategies when there are new policy and legislative changes. We find that the operating level staff's ability to respond to new policy implementation is really slow. It is not uncommon for our staff to be aware of new policies before the adjudicators know

about them. That is a serious problem with the delegation down of changes.

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We also would like to see some action on how files move around. We think the movement of files should be minimized. With experienced adjudicators, with more training in medical issues, with an overall greater degree of respect for the fact-finding process that adjudicators should be going through, we believe the number of occasions when a file has to leave the adjudicator to get another opinion or a review by somebody else could be dramatically reduced.

In looking at the adjudication problems, we feel strongly as well that the board should be consulting with the front-line staff. Adjudication staff know what is wrong with the process and they know what corrective measures they would like to make. They should be participating in the problem-solving process.

Finally, the stress management practices of the board should be reviewed. The work that these people do is really hard and it becomes a lot harder when people like us are expressing our dissatisfaction with their ability to turn the decisions out on a regular basis. An improved stress management strategy may be necessary, along with a look at the adjudication practices.

Communications are another aspect of the problem. The impact of these delays that I have just talked about is exacerbated by serious communications problems. Telephone calls are not answered. It used to be that the complaint was that no one answered the phone at all or that we just got caught waiting in sequence for several minutes only to have a message taken. With the innovation of voice mail, now the complaint is that we are able to leave a message but nobody returns the calls.

One feature of the voice mail system—it is not really a servicing problem—alarmed us when we realized what its implications were; that is, there is now a capacity for a caller to call in and key in a claim number and receive a status report. Staff of the office of the worker adviser have raised concerns with respect to privacy around this feature. It may be that it is secure, but we are not sure. We think the board should take a look at this and make sure privacy concerns are satisfied.

Again on communications, correspondence can be left for weeks without a response, as I said before, but on another level, much of the correspondence is not understood by injured workers, even those with reading skills in the language in which it is written. Injured workers are frequently seeking a representative just to get correspondence from the board explained in plain language. We have had people come in with a problem, with a decision that they thought was a problem, and it in fact allowed their claim but they were not able to tell from the language in the letter because it was overly bureaucratic and did not use plain language.

Overall, there is just a generalized lack of sensitivity to the importance of the role that injured workers must play in their own cases. This is manifested in several different ways. Entitlement denial decisions often state, with no apparent reasons, that statements of employers were preferred over

statements of workers with respect to details or circumstances of an accident. We find that benefits are cut with little or no notice or explanation to the workers, and frequently injured workers report that decision-makers just do not have the time to listen to their complaints.

When you set this against the delays, communication problems diminish worker confidence in the system and increase the fear and insecurity that workers have, particularly in cases where benefits have not been paid at because an initial entitlement decision is being waited for.

This has implications that go beyond the issue of initial entitlement. Permanently disabled workers who cannot be accommodated in their accident employment will have to rely on the board for rehabilitation into alternative employment. Successful rehabilitation depends in large measure on the establishment of a co-operative relationship between the worker and rehabilitation staff. The development of that relationship begins with the worker's first contact with the board. We find that when the worker is not able to develop a good relationship with the board in general because of problems in initial adjudication, that has an adverse impact on the capacity for successful rehabilitation in the future. This is a problem that has a permanent impact.

We think a new communications strategy is needed. Some of these elements might be necessary:

The use of the voice mail system should be minimized. Ideally, we would love to see all the calls answered by a person, but we also respect the need of adjudicators to book time off telephones to do the serious work on files that have to be done in order for them to arrive at decisions. However, wherever possible, in-person messages should be taken for adjudicators and strict rules for the use of voice mail, set in consultation with adjudication staff as support staff, should be put into place.

At a very minimum, all calls have to be returned. We have sometimes heard from the board that, "I've been trying to return the call but I can't find the worker at home." That could be a legitimate problem because all workers do not sit around all day waiting for that crucial call from the board. There is other business in people's lives. A suggestion we could make is that when the adjudicator has tried to return the call and been unsuccessful, perhaps the technology will support the dispatching of a very simple and brief letter based on a form letter, which could acknowledge the worker's call, provide a brief status report and provide the most likely available time for the worker to try and call back if the letter does not satisfy the problem. Otherwise, the telephone tag could go on for ages and nobody benefit from that.

The board should also, as I said before, ensure that the confidentiality of information is protected in the application of the voice mail system. Adjudicators should be given more support to explain their role and explain the decision-making process to workers. We find injured workers experience less anxiety if they know that a particular process is being followed and if they are given confidence that their concerns are going to be taken into account. Listening and explaining more support has to be given for adjudicators to take the time to do that.

Plainer language is needed in correspondence. For example, if it is important to include information on the legislative or policy framework within which the decision is being made: Put it in an attachment to the letter. Provide adjudication staff with access to writing courses that emphasize the simplest form of making a statement. Have language and literacy specialists look at pamphlets and perhaps draft the standardized portion of correspondence so we can raise the ability of workers of understand their own cases. Again, involve the front-line staff in the formation of the communication strategy. This is really important.

We also see significant delays in scheduling of hearings. It's almost standard now for six months or more to go by between the request for a hearing and the actual taking place of the hearing. This is too long. The only thing we can think of here is that more hearing offices are needed. There is a little bit more detail in the brief about that.

The Chair: Can you speak about the complex case units, that there are too many cases being referred—

Ms Tait: I am about to, yes.

The Chair: —and the occupational disease adjudication as an issue? Reference has been made to that by previous presenters today. We have to move on into the area of questioning now.

Ms Tait: Okay. I am happy with that.

Mr Ramsay: It seems the thrust of your presentation today is that adjudicators and others are overworked that they have too high a case load and that this is not only causing a slowness in the whole system but obviously stress to the people involved who are working at the board. Is it a matter of just more money, of hiring more people? There seems to be not enough people for the work that is there. What are the overall answers to the system? Is there just too much work for the people who are there at the board?

Ms Tait: That is a part of it. I think there are also ways to run things so that there is generally more support for adjudicators to do the job they have to do. Essentially what we are saying is if it costs more money to get it right up front, there could well be savings later on in the process. What we are proposing is more support for primary adjudication. There is a higher likelihood that the correct answer will be found right away and savings will be found later on in money that is now dedicated to appeal processes.

Mr Ramsay: Have you made these proposals to the board?

Ms Tait: Not recently.

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Mr Arnott: Have you any other suggestions as to how the adjudicator-to-case ratio might be minimized, aside from hiring new staff?

Ms Tait: Like I say, I think the operation has to be looked at, the way cases are assigned, the support that is given to adjudicate cases. Not having intimate knowledge of the operations, we cannot really say if it is just, "Add more money to the front line." In addition to adding more staff, to lowering the ratio, there are other efficiencies that might be able to be found if some of these things are

looked at. But clearly, I think more people have to be added to the front line.

Ms Melbye: I have noticed that a lot of adjudicators do not have the policy manuals available at their desks, so they have to consult with someone else, and the policies are being interpreted by different people without reference to the actual policy. The board recently tried to revise its four- or five-manual set of policies and the result is a single volume, but it is much less helpful to adjudicate because it does not spell out exactly what they are to take into account. It has general principles, but they will still need to go consult with somebody else so that you find that there is a different policy in effect at the different levels of decision-making.

You really have to apply the same policy at the operating level in order to avoid all these appeals, the majority of which are successful. So let's get it right the first time. I think that would save an enormous amount of money for the board and you could invest that in more staff to do a better job in the first place.

Ms Tait: The faster turnover with better support for adjudicators and staff as well will offset and perhaps increase costs that might seem necessary at the front end.

Mr Arnott: I just want to thank you for your very constructive suggestions.

The Chair: If anything comes to mind, just let us know and you can interject later.

Ms S. Murdock: I am glad you made the point about the money because I know it costs the employer anywhere from \$3,000 to \$5,000 per hearing. When you think of the number of hearings that are done in this province, it is mind-boggling and then forgetting those of the Workers' Compensation Appeals Tribunal, which are \$5,000 to \$10,000. So it is good to note that you can make the savings upfront.

But my question is on decentralization, actually. I know with decentralization, for instance, having the workers have more availability in their own bailiwicks was very beneficial, but there have been some complaints and I am hearing them again. I do not know how much validity they have in terms of the decision review branch being in the local regional offices and whether all the departments within the board should be decentralized or whether some should not be. For instance, the complex case unit is centralized. Should it be decentralized, etc? Comment.

Mr Halonen: Maybe I should answer that, since I am a regional manager. At least the report to me from my region is that decentralization has indeed improved adjudication at the DRB as well. I have not been an adviser before and having dealt with the centralized DRB as well as the regionalized DRB, there has definitely been an improvement in the first level of appeals through DRB, or DRS, decision review services, as it is now called, by regionalizing it.

Also, I think that within our brief, there is a recommendation with respect to the complex cases unit. There are different kinds of complex cases. It was our feeling that in many cases, the complex cases may well be better adjudicated decentrally provided that the technical support can be given centrally.

Presumably, with the imaging system the board now has, you could have a technical adviser talking to an adjudicator from one office to another having the same visual image in front of them and they could be discussing the case. Presumably that is possible as long as the file is visualized. In many cases, with the exception of maybe very complicated industrial disease cases where a number of these complex cases involve multiple injury types of situations and industries such as forestry or mining, it is our feeling that it is better adjudicated by people closer at hand to those industries and particularly in the north.

Ms S. Murdock: In relation to training, is it decentralization or centralization? When I first started working as a constituency assistant, it was centralized training for all the adjudication staff and that has moved into decentralized. I found that there has been a difference in terms of decision-making depending on which region you went to. Sometimes the interpretation is just not safe.

Ms Tait: I think that for an organization like the board both might be a good idea. There are some issues where the kinds of training would lend themselves to local expertise being used. For example, in the kinds of cases that occur more often in the north, local training on how to handle those issues might be a good way of doing it, but perhaps there should be opportunities for centrally drafted and delivered policy training. For example, when new initiatives come out, it might have to be put together in the centre and sent out to the regions. I think an organization like this probably deserves a strategy that accommodates both of those ideas.

Mr Klopp: On page 13 and following on the top of page 14, the Industrial Disease Standards Panel recommended changes to the occupational disease adjudication process. How many times and when have they asked for these recommendations you have put in place? It said they have been asked for, but how long ago? Six months ago?

Ms Melbye: Easily a year and a half to two years ago.

Mr Klopp: Okay, and you feel very clearly that schedules 3 and 4—is it just a straight field where the board should just take some action and get them in there? Is it already in place, but they have not acted?

Ms Tait: With respect to those diseases, yes. We feel more that there are a lot of other diseases that lend themselves to use of the presumption, if the board would act and get them into the schedules.

Mr Klopp: Okay, thank you, I just wanted to make that clear.

Mr Wood: First of all, I want to thank you for your presentation. It is very well put together. A couple of things then, not really a question; I just want to make a few comments. The staff turnover I see you have covered very well on page 7, along with case loads and more training and then a review of the stress management practices.

Having lived in the north most of my life, I am just wondering if this ties in. Every once in a while we will pick up the newspaper and find out that somebody has not got any payment for compensation for quite a number of years and that person has taken his life. When they interview the family, they have threatened that if they would have had time, they

would have taken some life on the worker's staff, I guess, who they felt was holding them back from getting the payments. I am wondering if the publicity on this is having a great effect on the workers. In the previous report this said staff only last about eight months in Ottawa.

It is really a comment. You do not have to answer, you do not want. Being in the north, one example was person who worked in the bush all his life and was moved to Ottawa. There are no trees to cut in Ottawa. There was very little education and the frustration after losing his house and his family and losing everything—there was statistic in the newspaper. I am sure that everybody who looking after compensation claims has to be thinking about things of this kind that are happening and are covered the *Globe and Mail*, the *Toronto Star* and these things.

Ms Tait: Yes, I am sure it has an impact.

Mr Waters: One of the things I have found since I became a member of the government is that everyone around here finds that our staff spend a vast amount of time chasing compensation, and I mean that quite literally and that is what it is, trying to track down these files and where they go. Do the WCB ever tell you where your file is off to? As an advocate for the workers, maybe you can answer that. If they do not, would it not be proper that they should?

Ms Tait: If you can connect with somebody on the phone and keep asking the questions in a polite manner that shows respect for the job that he or she is doing, yes, sometimes we find out what section of limbo the file is in and why. If you track it down, there usually is some sort of explanation, but often it has to do with something that we think could be minimized by giving the adjudicators more training and support. Do not have a system where every decision has to be vetted by three or four people, medical advisers, technical advisers, supervisors. Support the adjudicators, delegate more authority down to them to make the initial decision and the file is likely to be right where we think it should be, on the adjudicator's desk, waiting for him or her to be able to make the decision and pass it on.

Mr Waters: One more question is, if you have been sitting through some of the hearings, and I think I have asked it a couple of times now because it has come up, do you think there should be a set of definite time lines? You have now put a claim before the board and within so many days you should have at least an acknowledgement. Do you think there should be anything like that?

Ms Tait: We are a little nervous about them for three reasons I looked at earlier. If the time lines do not allow for the kind of work that has to be done to come up with the right decision, then by themselves the time lines will not solve the problem. It is not going to help if adjudicators are required to make a decision, and yet the investigation department has not been able to come up with the answers to the questions it has identified as key to supporting the decision. So we are a little nervous about the idea of timely decision-making policy which does not accommodate their evidence- and fact-gathering needs. Combined with the adjudication support method that respects that they have to find this information in order to make the right decision, yes, there has to be some combination of those two things.

The Chair: Thank you for your time, for your preparation and for your co-operation. I want to thank Mr Di Sisto, who has been here as a spectator throughout the afternoon and has obvious interest in what is being said, and Mr King, the second new appointee. I want to

thank the committee for its co-operation and assistance in making the afternoon run smoothly.

The committee adjourned at 1802.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Arnott, Ted (Wellington PC)

Cleary, John C. (Cornwall L)

Dadamo, George (Windsor-Sandwich NDP)

Huget, Bob (Sarnia NDP)

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Workers' Compensation Board

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de l'Ontario

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Commission des accidents
du travail

Clerk: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 3 June 1991

The committee met at 1602 in committee room 1.

WORKERS' COMPENSATION BOARD

Resuming consideration of the designated matter, pursuant to standing order 123, relating to the Workers' Compensation Board.

The Chair: We have three groups here today: first, the Employers' Advocacy Council; second, at 4:30, CUPE Local 1750, and third, at 5 pm, the Kitchener-Waterloo Injured Worker's Group. I would ask that people make their presentations in 10 to 15 minutes maximum so that there is some reasonable period of time for discussion between yourselves and members of the committee afterwards. I would remind people that the question or the issue to be addressed here is a review of the procedures of the Workers' Compensation Board which impede the provision of efficient services to workers and employers. I would ask people to direct their remarks and their questions and responses to that very issue.

EMPLOYERS' ADVOCACY COUNCIL

The Chair: Could we please have people from the Employers' Advocacy Council come on up, have a seat and tell us who you are and speak to us.

Mr Cryne: Unfortunately, it is only one person whom you have before you from the Employers' Advocacy Council. My name is Steve Cryne. I am the provincial chair for the Employers' Advocacy Council.

The EAC is a non-profit organization of Ontario employers committed to reshaping the provincial workers' compensation system into a more manageable, cost-effective system which recognizes both the needs of the employers and the workers of the province. Over the past five years the EAC has grown to over 1,300 members, with representatives in each of the major centres in Ontario, including Sudbury, Peterborough, Toronto, Hamilton, London and Windsor. Our objectives are simple and straightforward: to effect constructive change to the workers' compensation system through the involvement of the employer community, to lobby on behalf of employers before the Ontario Legislature and the Workers' Compensation Board on major policy issues and to educate employers on all aspects of workers' compensation.

We thank you for the opportunity of coming before this committee today to provide information from the employer community regarding the mode and quality of service delivery. We submit the following issues for your consideration.

That the system has faltered in servicing the worker and employer communities is really not surprising considering the extent of the changes it has undergone in the last five years.

In our view, the system has failed as a consequence of two main reasons, first with the introduction of two major revisions to the Workers' Compensation Act through Bill 101 in 1985 and Bill 162 in 1988. Both pieces of legislation not only introduced massive change but also created great uncertainty and confusion. A clear example of this confusion is seen with the continuing debate between the Workers' Compensation Appeals Tribunal and the board as to which body has the final say and who holds the responsibility for establishing policy.

Many people argue that the board no longer establishes policy but simply responds to the decisions of WCAT. Because of this situation, the board has lost a great deal of credibility with the stakeholder groups. The reality of the situation today is that we have two adjudicative bodies in Ontario dealing with the same piece of legislation but having far differing viewpoints. This situation, in our opinion, was clearly not contemplated by the legislators of the day and is an unacceptable situation in today's society.

Similar confusion is arising from Bill 162, where legislative intent is being questioned and the comments of the previous minister are being relied upon to develop policy and regulations. These are poor conditions that the board is required to contend with.

Second, the major restructuring within the board, with the introduction of integrated service units, the technological initiatives such as imaging and the communications developments, and new strategy after new strategy have made it extremely difficult for line staff of the board to cope.

The board itself cannot be held accountable for this failure. Clearly, the Ministry of Labour along with the board of directors appointed to oversee the activities of the board must assume some responsibility for the present state of affairs. It is our view that the board of directors has been used as nothing more than a rubber stamp to simply implement change within the board without the benefit of a full evaluation and knowledge of the consequences.

Having identified the problems and probable causes, what then are some of the possible solutions that we have?

With the appointment of a new president and chairman of the board, retention of certain key positions in line management is critical to the stability of the organization. What would be most dangerous at this juncture is a major overhaul of board management.

Second, the minister should immediately request the board to suspend any further policy development, restructuring or revenue initiatives.

The minister should request an operational and a value-for-money audit, to be conducted by the Office of the Provincial Auditor.

The minister should request a review of the accident fund by the provincial superintendent of insurance.

Fifth, the minister should establish a problem-solving committee comprised of board and ministry staff and representatives from the stakeholder groups to deal with the problems identified through the value-for-money audit by the Provincial Auditor and problems known to presently exist within the system, which include the following:

Review of the adjudication process: a review of present case loads and backlog; a review of entitlement, payment and medical management issues; a review of training and development of the adjudication staff; a review of current communications systems and methods; and establishment of comprehensive performance standards for all integrated service units.

Second, with regard to vocational rehabilitation, we suggest a review of present rehabilitation practices of the board and identify problems related to lack of employment as a consequence of the poor economic climate in Ontario and a review of case loads of board rehabilitation staff.

Third, with regard to revenue, establish a permanent employer advisory committee to provide guidance to the revenue branch on improvement of the branch's services.

Fourth, under the appeal process, review the effectiveness of the present appeal process and its multilevel approach.

The Workers' Compensation Appeals Tribunal should be directed through the act to decide the narrow issue of whether or not the board has applied its policy correctly, and should not be permitted to influence or establish board policy. This role ought to be the sole responsibility of the board and its appointed board of directors.

Finally, we wish to see stakeholders permitted to appoint their own representatives to the board of directors, to the WCAT, the office of the employer adviser and the office of the worker adviser.

Although these suggestions are not all-inclusive of the problems that are facing the Ontario system, we believe they address the major areas of concerns. We also believe the initiatives we have suggested will return integrity, financial stability and accountability to the system.

The Employers' Advocacy Council is willing to participate in the initiatives we have put forth to build a better workers' compensation system for both the workers and employers of this province.

We thank you for providing our council the opportunity to appear before this committee.

Mr Arnott: Thank you, Mr Cryne, for your presentation. I have a question with respect to one of your preliminary comments and I will quote you back. "A clear example of this confusion is seen with the continuing debate between WCAT and the board as to which body has the final say and who holds responsibility for establishing policy." I am just trying to clarify that. Are you saying that what is happening is that the precedents being set by WCAT are in contradiction to some of the policies the board is putting forth?

1610

Mr Cryne: Many of the decisions that have been rendered by WCAT have effectively set the future direction for the Workers' Compensation Board itself. There have been a number of decisions that have clearly redefined the

scope and expanded the benefit net, as we call it, in the workers' compensation system. I think clearly probably one of the most shining examples of that was the definition of "accident," which was debated at great length by WCAT and ultimately had some influence over board policy in that area. Other decisions that come to mind are the introduction of stress that we are seeing into the system, introduction of interest on payments, and revenue sharing. So there has been clear influence from that body, yes.

The Chair: If matters arise that you want to comment on, just let us know and you will have opportunity later.

Mr Huget: In your first point on page 2, you say, "What would be most dangerous at this juncture is a major overhaul of board management." Why do you feel that way?

Mr Cryne: I think it is important that you maintain stability within the organization. I think the people who hold key management positions within the board clearly have a lot of experience and knowledge of the system and it is our viewpoint that they ought to be maintained at this point in time. We were quite worried that the organization would go through a major overhaul and we do not see that as being a particularly good move at this point.

Mr Huget: So you do not see that as being a method of improvement?

Mr Cryne: No.

Mr Huget: Could you argue that if we maintain current management stability, it also means a continuation of the current problems and no improvement?

Mr Cryne: I think the direction of the organization has to be set by the new chairman and the new president and clearly their direction will have a lot of influence over those line management people. My point, and the point of the organization that we are trying to make, is that accountability does not lie with the line management; clearly lies at the level of the board of directors and the past chairman and president.

Mr Huget: On the same page, in point 2 you say that the board should "suspend any further policy development, restructuring or revenue initiatives." Can you elaborate on that?

Mr Cryne: The board presently has a revenue strategy that is out. They have spent an awful lot of work on that issue. They have spent a lot of work on some policy papers that are presently out for consultation. Really, we are suggesting is that anything that is in the pipeline now would continue, but we stop until the dust settles, and go through this process, and then we can look at introducing additional changes if it is felt to be necessary. But just seems like we have this continuation of strategy after strategy and introduction of new policy after new policy. There are a lot of loose strings with regard to Bill 162 that have not been addressed at the moment, there is a committee that is reviewing that, and it is our viewpoint that the brakes ought to be put on the system until the verdict is on some of those things before we go ahead and introduce additional change into the system.

The board staff themselves are having a great deal of difficulty dealing with a lot of the change that has been introduced into the system. I am not saying who is right and who is wrong on that; all I am saying is that at this point you cannot begin to add more confusion to the situation. That is our point.

Mr Huget: If the improvements in terms of the service issue and the like require some restructuring, are you saying we should not proceed along that path either? If it were identified very early on that there was some restructuring that would alleviate some of the problems in terms of any number of issues on the service factor, would that be confusing?

Mr Cryne: No, I do not think that would be confusing. If there were something there that was startling, where you said that for the benefit of the system, for whatever purpose, this change ought to be made with haste, and the reasoning behind it was sound, then of course you would proceed in that manner.

Mr Huget: You also mention revenue initiatives. Would you define, in your view, a revenue initiative?

Mr Cryne: One of the things that presently is before the board is reports on experience rating; there is a study that has been undertaken on experience rating. Experience rating works very well for many industries in the province and it is in that area that we have some concerns.

Mr Huget: You mention that we should suspend any revenue initiatives. Why would we do that?

Mr Cryne: As I mentioned, the board at the moment trying to get through a major revenue strategy which basically changes the system the Workers' Compensation board has had for the past 75 years in terms of its rating system; that initiative is set to be implemented in 1993. All we are suggesting at this juncture is let's do that, let's get it at right and leave revenue as it is. There is an awful lot of change that will come about as a result of that revenue strategy and our concern is that we just do not heap more confusion and change into that.

Ms S. Murdock: Just on that point, my understanding was that that was going to come through in 1992 and at the employers' request it has been delayed until 1993.

Mr Cryne: We have supported a delay in the implementation of the revenue strategy. One of the reasons behind us supporting that is that we were very concerned that the project was such a large undertaking on the board's part that we wanted to ensure it got it right rather than just rushing through the project, implementing it in 1992 and then having so much confusion. As I said, the system we have in place has been there since 1915 and we wanted to make sure that when they did put it in, they did it right.

Ms S. Murdock: I just have a couple of questions with regard to your point 5, the problem-solving committee. The agenda you put before them is so all-encompassing, I am wondering what would happen while they are reviewing all of these things?

Mr Cryne: What?

Ms S. Murdock: For instance, if a problem-solving committee were set up that would look at adjudication,

vocational rehabilitation, revenue and appeal process, in the interim everything would be operating as is? Is that what you are recommending?

Mr Cryne: Yes.

Ms S. Murdock: And that this problem-solving committee would be a committee that would be operating all the time, would be set up permanently? Is that also part of the plan?

Mr Cryne: We did not really think it would be a permanent committee, but I think that may have some merit, that a permanent committee be established and maybe, as I suggested, that it takes people from each of the communities, including the ministry staff, kind of a task force made up of representatives from all the community.

The Chair: Thank you, Ms Murdock. We may have some more time afterwards.

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Mr Cleary: Steve, I take it you have been around in this position for a considerable time. If you were to give us a bit of guidance with all the problems you listed, where would you start?

Mr Cryne: How long do I have?

Mr Cleary: It is up to the Chairman.

Mr Cryne: That is a very difficult question, Mr Cleary. I think probably the most critical area would be adjudication. That is the first line within the board; that is the first person within the board who sees a document that records an accident or an injury; and it seems to be from that point forward. If I were to take a bite of this elephant one piece at a time, that is where I would start, in the adjudication area.

Mr Cleary: That would be the start.

Mr Cryne: Yes. In terms of those things things that I have proposed there, yes.

One of the critical things that I think ought to be done with some haste is the operational value-for-money audit that we have suggested in item 3.

Mr Arnott: I am interested in the suggestion on the last page, appointments to the board. I am not that knowledgeable about the board as it presently is. How many members does it have?

Mr Cryne: There are representatives from each of the communities. What has happened in the last six months is that—

Mr Arnott: I am sorry to interrupt, but they are all appointed by the provincial government, are they not?

Mr Cryne: That is correct.

Mr Arnott: And they are picked based on the stakeholders—their minimum per cent.

Mr Cryne: Yes. They have been open to suggestions and nominations from the different communities to the board of directors.

Mr Arnott: What would your feeling be on the ideal balance, to have nominations that are represented by the stakeholders and an equal number of the government, or what?

Mr Cryne: Yes, and what we are trying to do is have greater influence over the people who are selected through that process.

Mr Arnott: And this goes not just for the board but for WCAT.

Mr Cryne: That is correct, and the office of the employer adviser.

Mr Arnott: Do you have any specific concerns about those two offices, the office of the worker adviser and the office of the employer adviser.

Mr Cryne: Yes. I can only really speak to the office of the employer adviser. Although I have a fair amount of contact with representatives from the OWA, it is mostly with the office of the employer adviser. We would like to ensure that their mandate is defined, that they are meeting that mandate, that the people who are responsible for ensuring that that mandate is met have a commitment to the employer community and to the process at large from the employer's perspective. I think that is key, that they maintain integrity in that regard.

The Chair: Ms Murdock, once again.

Ms S. Murdock: Actually, on the same point that Mr Arnott raised, that was my question before and I just want you to elaborate on that a little bit. As you know, the board of directors right now consists of nine members: four management, four labour, one public/professional. My understanding is that, for instance, the management side, all major management groups, for instance the manufacturing group, would be asked for suggestions as to who would sit on that board. I do not know whether the Employers' Advisory Council would be one of those groups, but I am sure that, just for your information, if you wished to be consulted in regard to who those appointments would be, there would be no problem to get on the list kind of thing. Has your group been consulted in terms of that?

Mr Cryne: Our group has not been consulted in that regard. There was a recent appointment and we could not find out who made the nomination.

Ms S. Murdock: And in regard to WCAT, do you not also—

Mr Cryne: We have not.

Ms S. Murdock: None at all?

Mr Cryne: We have not had the opportunity to, with regard to the chair on that, no.

Ms S. Murdock: But you are not disputing that the employers in fact are the ones—

Mr Cryne: I am not disputing that we have representation. All I am suggesting is that we have greater involvement in appointing those people.

Ms S. Murdock: In regard to the office of the employer adviser, in your instance, and the office of the worker adviser, am I correct that in your response to Mr Arnott you are asking that you would have a say in who the employer advisers would be?

Mr Cryne: Not in who the employer advisers would be, no. There is a director of the office of the employer adviser.

Ms S. Murdock: Who the director would be?

Mr Cryne: Yes. We realize that the office has to have certain staffing requirements and so on, and that would be left totally to the organization.

Mr Waters: Maybe I just missed the preamble. You said, what was it, 1,600 clients you have?

Ms S. Murdock: Thirteen hundred.

Mr Waters: You have 1,300 clients?

Mr Cryne: We do not have clients, Mr Waters, we have members. Our council is a volunteer body of employers, and employers across the province join our organization and we do training programs for them. We are a volunteer organization made up of employers from across the province. I do not work for the Employers' Advocacy Council, I work for Budd Canada in Kitchener.

Mr Waters: What size employer would you actually represent for the most part?

Mr Cryne: We represent very small employers with 10, 15, 20 employees, up to employers with many thousands of employees. We cover a very broad spectrum of the employer-based community.

Mr Waters: The next question deals with the day-to-day dealings these people would have. Is it improving, all? We have heard from some different groups that it is and other groups are saying that it has not.

Mr Cryne: Telephone calls, getting letters and so on.

Mr Waters: Yes.

Mr Cryne: It is no better now than it was two years ago. It is still the same frustrations for the board staff, the employers and, I am sure, the representatives from the legal clinics and the office of the worker adviser. Those things do not seem to have changed substantially. They still seem to be the same frustrations.

Mr Waters: This is just an overall opinion. Some of them have put in modern equipment, I believe. I do not remember the name of it.

Ms S. Murdock: Imaging.

Mr Waters: Even in those areas it has not changed. Even in the offices where WCB has put imaging equipment in, you have not found any changes yet?

Mr Cryne: All imaging has done is cut down on the amount of paper that is there. I do not think I am qualified to say how the board's staff have handled imaging, but certainly from our viewpoint it has not really done a lot to expedite the system.

Mr Klopp: Page 3 at the top says, "Establish a permanent employer advisory committee" in the revenue branch. That sounds like it is really inside the internal working and yet at paragraph 7 you would be happy to get a board of directors which maybe represents more of an open view. Paragraph 5(c) seems to be very much hands on in the operation. What does this branch do and how come you want to be so involved with it?

Mr Cryne: The revenue branch is going to be very responsible in terms of directing this revenue strategy and it is implemented in 1993. There is an employer advisory committee that has been formed that is helping the board.

implementing this project. We would like to see the revenue branch use a committee to determine how effective the strategy has been once it has been implemented.

Mr Klopp: Just the employers?

Mr Cryne: Yes, in terms of the revenue strategy, it really does not affect the worker community.

Mr Klopp: It does affect them, though, if there is not enough money in the kitty.

Mr Cryne: Not in terms of where your question is coming from.

Mr Klopp: I do not know where it is coming from. I am just a farm boy who is asking questions.

Mr Cryne: I think the important thing is that the employer community wants to see the integrity of the accident fund maintained. People who do not pay revenues are much a burden on the employer community as they are on the worker community. So it is important that we maintain that involvement.

Ms S. Murdock: Very quickly. Does Budd use a software program? For instance, would you notify the WCB of injury through the use of something that was on your computer?

Mr Cryne: Yes.

Ms S. Murdock: Rather than the WCB form itself?

Mr Cryne: No, we then put it into a WCB format.

Ms S. Murdock: Is there any particular reason you do that?

Mr Cryne: The board has its imaging system and they have a number of different things that have to be done by us comply with the request that we provide the information on a form 7.

Ms S. Murdock: So what you are saying is you duplicate it.

Mr Cryne: Essentially, yes.

The Chair: Thank you, Mr Cryne, we appreciate your coming before the committee, your written material and your comments today. When a report is prepared, you will undoubtedly be among the very first in the province to get a copy of it. Thank you for coming.

Mr Cryne: Thank you.

CUPE LOCAL 1750

The Chair: We remind people that there is coffee here. Please make yourselves a cup of coffee if you are inclined.

CUPE Local 1750 is here, would they please come up. Tell us who you are please and take 10 to 15 minutes with our initial comments so we can talk for the balance of the half-hour.

Mr Mucci: Mr Chairman, fellow brothers and sisters, I am Frank Mucci, president of Local 1750. The union represents some 2,400 members at the Workers' Compensation Board and I thank you for inviting us here before the standing committee. I understand indeed that you have your brief before you. We sent it way back I believe when the filibuster was going on. You might recall that.

The Chair: There are filibusters and then there are filibusters.

Mr Mucci: That was a filibuster—yes, yes. Having said that, Mr Kormos, I would like to extend a hello to you from your friends and all that in Vineland, in Niagara Peninsula.

The Chair: God bless them. Good folks.

Mr Mucci: Yes, you can explain to all your fellow friends here about that.

I hope that you have had an opportunity to read this report of ours. Phil Allan is an executive board member as well from CUPE Local 1750, and he will be helping out with this presentation. I want to give you a short preview of it. I do not want to speak too much in terms of the preamble itself because I would like to think you might have some questions for us. One might assume indeed that we have some information to provide in terms of the staff, at least our staff. But as you have probably seen through our report, we extend ourselves over and beyond that to get into other areas of the Workers' Compensation Board.

As you do know—in light of the fact I was here last week as well and heard your presentations—indeed the Workers' Compensation Board was created by an act of the Ontario Legislature in 1915. It provides for medical treatment, financial compensation and vocational rehabilitation for individuals who are injured or who develop diseases in the course of their work. This system is financed entirely by the employers of Ontario, currently at more than \$3 billion a year, and deals with almost one-half million claims annually.

Over the past few years the WCB has experienced a metamorphosis. Practically every aspect of the organization and its services has been affected, resulting from legislative amendments and internal transformations of its structure, organization, staffing and service delivery models. As a direct result of the magnitude, speed, lack of research into and co-ordination of these changes, the Workers' Compensation Board is now unable to provide the level of service to the injured workers and employers of Ontario that it could, should, or is legislated to provide.

The cost of the board's impotence is not only the more than \$3 billion paid by Ontario employers, or the losses suffered by individual workers who fail to receive the benefits and services to which they are entitled, but also the cost to Ontario's economy and government services that have to pick up the slack because the WCB has failed to fulfil its legal obligations.

By outlining some of the changes and the resulting problems at the WCB, we are in this brief pointing out the tip of the iceberg, of which you are at least partly aware. The catastrophic condition of such an essential function as workers' compensation is justification for our call for a royal commission into the state of the Workers' Compensation Board of Ontario, to evaluate its mandate and its effectiveness.

In spite of pressure to reduce protection and services to the citizens of Ontario by levelling the playing field to levels found in other countries, CUPE 1750 implores the government to protect the essential and well-established concept of workers' compensation. We do not feel that

such a commission should examine the WCB with the idea of replacing it with a universal disability insurance program as its central term of reference. Such an idea, if considered, must be examined with a probing, critical eye.

Ontario cannot afford to have people's lives toyed with, as the WCB has done with injured workers and its staff. A royal commission should examine and recommend how the WCB can discharge its responsibilities compassionately, effectively and efficiently.

If I may, I will add a little bit here. I have been an employee of the Workers' Compensation Board for approximately 20 years. I have noted particularly the essence of this standing committee. The source of concern would appear to be oriented around the aspect of the adjudicators, the adjudication process, rehabilitation, case workers now, but all in the vein of case loads, whether it be the adjudicators or indeed the case workers.

Having been a rehabilitation counsellor at one time, many years ago, certainly I endeavoured to meet my mandate with great empathy towards injured workers, great compassion, a path which I followed with professionalism. Indeed, I was encouraged to follow that path, to be involved with at least the professional associations. It was one that was encouraged and one that was a mandate of all my associates and colleagues.

For the last 10 or 12 years I have been an investigator with the Workers' Compensation Board, so I have seen another aspect. This has been changed somewhat. This view as an investigator is one whereby an investigator goes out, meets not only with injured workers to investigate a claim but meets with the employers, the doctors, witnesses, everybody. It is also a position whereby we are in a position to give advice.

Having said that, things have changed. During the last five years or so, we have seen a transformation, a metamorphosis like never before. As with any organizational change as such, basically people do not like it. They do not like the change. At the compensation board, the staff enjoy the camaraderie of friendship that involved not just work activities but outside of work as well. We had a caring attitude, not just among ourselves but for those we served.

That has changed drastically, because of organizational changes, but when we have a former vice-chair, in the person of Dr Alan Wolfson, orchestrate change after change after change, when you are coerced into changes as such, resentment runs high. It is not just a change of your lifestyle; it is a matter of resentment. Resentment is that which lasts much longer than a change of any lifestyle.

We think there is a good change now, that being with the government, by all means. We are encouraged by that. We are encouraged by Odoardo Di Santo being in place, and vice-chair Brian King, but we cannot help but think that not unlike horses and, I suppose, jockeys, we have changed the horses but the jockeys are still there. Persons who made decisions in the past are still there. I am speaking specifically of the senior vice-presidents.

We are talking about some people who were brought in by Al Wolfson. Certainly their career paths are not oriented necessarily with the Workers' Compensation Board. We

have definite concerns here. I will pass it on to Phil to through this routine with our presentation and we will answer any questions you may have.

1640

Mr Allan: You have our brief. I want to keep it very short. I am sure you have had a chance to go through it and you have a lot of questions, and we want to have most of our time on that.

I just want to highlight one quick change which was made and has generally received unanimous support, and that was the move of regionalization: getting claims administration control for claims out of Toronto into offices from Windsor to Ottawa and up to Sudbury. Unfortunately, because the board has tried to have everything unanimous and uniform across the province, they also spread the integrated service units to areas. Unfortunately, we went from regional offices, where we were providing a service that was highly regarded, having good contact with the workers and employers, to a point where we have had those services divided by an integrated service unit which was not working in Toronto or Windsor, and it is definitely not working in any other places where it has recently been reinstated.

At this point we will pass it over to you for your questions. If you do not have any questions, I am sure we can highlight a number of other areas.

Mr Waters: I am curious about something right at the bat. What is the rate of accident for compensation with the employees at the board? The stress level has to be unbelievable, from what we have been hearing.

Mr Allan: At this point stress claims are not accepted. Three of them have been accepted by WCAT. However, I think if they were to be accepted across the province, you would probably find about half the board's staff on compensation within a week.

Mr Waters: Stress creates other problems and you must have a fairly high incidence, I would imagine, stress-related accidents. Stress might be the cause, but you would not be able to claim under that.

Mr Mucci: What invariably happens, of course, they do not go off on a stress-related claim because it is not accepted. They go off on long-term disability—sick leave first, then LTD. This is a regular feature. We see that through the central health and safety committee meetings that we have jointly with the employer. While everyone was affected last year, there was some protection within the bargaining unit. Having said that, the number of people particularly in the adjudication field, who contacted us and wanted us to rush through CECBA changes as fast as we could, were greatly concerned, and certainly the amount of people we lost would justify that concern.

Mr Waters: Are the workers ever consulted about the workings of WCB? Are you ever consulted about the policies or the means of carrying out policy?

Mr Mucci: Do we have enough time to talk about this, really? No, we are not. I could cite a lot of examples during the last couple of years—in particular, last year, where, when we were consulted it was on the basis of something already taking place, already being minute

already being determined and, "This is the way it is and there's no need for a meeting." It was basically down to Mr. Dr Wolfson was greatly influential and had very little concern for its staff as far as I am concerned and his only concern was that of devolvement.

Mr Waters: On page 17 under staffing, temporary employees, unless I read this wrong, you basically imply that WCB is trying to do away with full-time staff. The way I read it, it looks like a concerted effort to keep everybody on contract, short term, so that they do not know where they are from one day to another. Has that changed or is there any sign of that changing?

Mr Allan: Of our members, approximately one third are temporary staff. Most are vocational rehabilitation case workers, and although some of the figures put out by the compensation board indicate that the average case load per case worker is about 60 or 70, I have statistics off the board's computer for 2 May and it indicates that it is more likely 100 or 110. In Ottawa, where I am from, we have 14 case workers with over 100 clients. Two of them have over 150.

Mr Waters: Okay. One last question, because I know there are a lot of people here. You and others keep saying that WCB has been looked at, time and time again, but has anybody ever asked you, the worker, to come forward and state your views or if you know how to fix it?

Mr Allan: A lot of people have been doing that on their own. One prime example would be back in 1989, in September, when employees of the board got a document titled Vocational Rehabilitation Strategy Implementation. That document outlined essentially the board's rationale for the vocational rehabilitation strategy, and in part of that, it had its staffing requirements. According to this, as of November of this year, vocational rehabilitation case workers should not have any pre-1990, pre-Bill 162 cases. Unfortunately, the reality of the fact is that case loads are a lot higher. We still have over 50% of our case loads being comprised of these people who are not getting a fair shake, especially when you compare them with Bill 162 cases.

Information has been put forward. If there were an effective internal consultation process, with input from rehabilitation, from claims and from revenue, a lot of the problems we are facing today would not have happened.

Mr Dadamo: As we have a new chairman and also a vice-president, and the speaker before you alluded to the fact that this quite possibly is not the juncture to make any changes at the top, how do you feel about making changes?

Mr Mucci: One would think indeed that now might not be the right time for change, that maybe we need a period of stability.

Mr Dadamo: When is the right time?

Mr Mucci: But I think it is the time right now, absolutely. To understand the present, we have to look at the past. Henry Ford was a brilliant man but he said history was bunk. I do not buy that. I think we have to know where we are now before we are in the future. I think Mr King and Mr Di Santo ought to take a stand as to just

where they want to go, how they want to go about that. I get the feeling that the same decision-makers are there and I am concerned, that maybe not all the information that should be there will be filtered to Mr King and Mr Di Santo.

Mr Di Santo has taken on quite a chore, there is no question about that, and Mr King likewise. To know the functioning of the vice-president and senior vice-presidents is to question their motives. I do not want to be too radical about that, but we have seen this in the past. We saw no justification for any trust in the past, and we do not see it in the future either.

Mr Huget: I want to stick with the vocational rehab strategy. In your brief on page 8, you refer to something called Workers' Compensation in Ontario, a System in Transition, 1985-90. You go on to say that the board had said in that document, "The strategy was put into effect in three pilot sites in January 1989, covering about one sixth of all claims, and with its affirmation by Bill 162, it is now being implemented board-wide."

You then go on to say that statement is more than misleading, and it is false. Could you elaborate on that?

Mr Allan: All you have to do is take a look at the Bill 162 provisions relating to vocational rehabilitation assistance, and take a look at one of the many brochures, public relations documents, which are very well written, put out by the Workers' Compensation Board, and compare the findings and the key components in the two of them, and that will give you a very clear indication.

Mr Huget: So I guess the policy as stated is not the policy as it actually exists?

Mr Allen: One of the things that happens is that Bill 162 has certain legal requirements for the board to follow, and the Workers' Compensation Board has introduced the vocational rehabilitation strategy as one possible means to meet those goals and to make a lot of other changes as well. It is our contention from having looked at it that the vocational rehabilitation strategy is essentially flawed. One of the reasons we say that partly relates to the fact that although there have been various reviews of the pilot projects, we have yet to see the reports and we do not know of anyone who has seen the reports looking at the effectiveness of the strategies.

One of the figures which came up was that with early intervention alone, the rehabilitated employed rate would increase a certain percentage because of those workers who were having full recovery of those injuries and were getting back their pre-injury jobs on their own, previously. But now, because of the early intervention criteria it would now be associated with rehab and we would have a somewhat inflated aspect of our statistics. But if you actually look at the actual statistics from pre- and post-VR strategy, you will find that those numbers have plummeted by almost 50%.

1650

Mr Huget: I just have one other question. Could you tell me what a year-end closure blitz is?

Mr Allan: Essentially, it is a period during which time rehabilitation counsellors, as we used to be called, now case workers, are told to go through their case loads and find out which files can be closed, not really giving too

much consideration as to whether or not they will be re-opened, because it gets the numbers somewhat inflated for the end of the year, particularly with rehabilitated employed.

For example, normally our policies indicate that before having a rehabilitated employed file closed, the person should have been in his job for four to six weeks to make sure everything is working out. We have had cases where people have been in their job less than a week and the closure is being approved.

Mr Mucci: What we are getting into to a certain degree is the fact that what was there before was not perfect, and we have said that. We go as far back as the DRC as well, and I need not talk too much about Downsview Rehabilitation Centre. If I may, though, Dr Wolfson's son was receiving treatment there last year. It was not good enough to keep open for the injured workers of Ontario, but it was good enough for his son to be there with a non-compensable injury.

Having said that, we know things needed changing and we would easily go along with that, whether it be rehabilitation services, whether it be the claims, medical strategies; there is no problem. It is the fashion in which it was procured and how it went about, without the consultation. It was just too quick. It was a terrible strain on the staff, by all means, as many people have alluded to, to the employers as well, to the injured workers and to your constituencies. There is no question about it. You suffered.

The Chair: Very quickly, Mr Huget.

Mr Huget: Just a little term I want some clarification on, and it relates to the same thing as the year-end closure blitz. What is a closure party?

Mr Allan: I have never been involved in one—

Interjection: That you will admit to.

Mr Allan: Some of my colleagues in Toronto had given me a copy of a pamphlet which had been posted, which is included in part of the brief, where they were having a gala festival and people were bringing their cases which could be closed, coffee and doughnuts provided by the board, and apparently had a great time. That is the only thing which I can think would be a closure party.

Mr Huget: What was the purpose of those operations, the blitz and the party?

Mr Allan: Closing files, inflating statistics.

Mr Huget: To manipulate your statistics?

Mr Allan: Largely.

Mr Cleary: Gentlemen, you say a system in chaos; you refer to a royal commission; you have been very critical in your brief, and rightly so. I would like to hear from you gentlemen what steps you would initially take to solve the problem.

Mr Mucci: We need some ad hoc steps, by all means. We do not suggest the end-all would be a royal commission, not at this point. I think we have to take some initiatives right away, as soon as possible. Are you leading towards a wish list sort of thing?

Mr Cleary: Yes, I am.

Mr Mucci: Case loads, adjudicators, case workers have to be down. Along with that, the adjudicators and the

adjudicator assistants, who basically function as fact-gatherers, no more and no less, should be in the bargaining unit as well, if only for job security. They will function much better, be able to alleviate some of that stress they have indeed exhibited and experienced.

Certainly we should be attempting to recruit more case workers. We need more case workers, no question about that. We have had experienced counsellors, maybe 60 to 80 experienced case workers, leave in the last two or three years. We need these additional people to be properly trained, absolutely. When people calling in and making inquiries know more about the policies and strategies than the people answering the phone, we have a problem. How far do you want me to go on?

Mr Cleary: Just on the one thing, I do know a little about workers' compensation, I guess; I have been involved in it for many years, too. You say these people should be in the bargaining unit?

Mr Mucci: Absolutely. The adjudicators, the adjudicator assistants, no question about that. In fact, I do not think there is any opposition whatsoever, other than the legislation itself; the written word in CECBA stops and inhibits them. In fact, throughout Canada the adjudicators through the other workers' compensation boards are part of the bargaining unit. Even Dr Elgie, even Alan Wolfson—maybe it was tongue in cheek, I do not know—had no opposition to it. All they simply told us was, "Change the legislation."

Mr Cleary: Okay, that is good to know.

Mr Allan: To continue with the wish list just for a few quick points, we should have more consultation with people who are actually providing the services when they are going to be changed, number one. We have to have training for the people who are doing that. Our local conduct a survey, we passed out 2,500 surveys last year and found, on one question, that 85% of the people who responded to the survey felt that service to the injured workers and employers of this province has significantly decreased.

One of the reasons when you look at that is that when we ask people about their understanding of Bill 162, 15% felt that they had a good understanding of Bill 162, 31% felt that they had a poor understanding and 49% felt that they had a moderate understanding of Bill 162. It is pretty scary when you consider that piece of legislation is having a primary effect on the service we are giving.

Telephones: People who work at the board cannot get through to our colleagues, let alone workers or employers or representatives who are trying to call through.

Just to touch base on what a gentleman mentioned earlier, imaging. It is a wonderful technology, and I think IBM being very appreciative of the funds that the compensation board is putting into it, but I think we have got two choices with that: Either scrap it immediately and go back to a paper file or get the system to work and get it to work right, because right now we are dealing with a system which does not do what it could do or what it should do and it is not providing the assistance. It is very time-consuming.

We talk about having a paperless office society. Do you know how many new forms we have had devised from rehabilitation in the past year alone, let alone the forms that deal with the imaging system? It gets bogging, and those are just four quick areas that I think have to be attached base on very quickly, in addition to the ones that we mentioned earlier.

Mr Cleary: That is society, though. That spills far beyond compensation to all these extra files and everything. It is just a state that we live in, I guess, but I agree with you, and I do know there are lots of problems and they have been there for a while.

Mr Allan: They are going to get worse. Right now, when you are dealing with files which have been around since January 1990, most files, if your paper file would be about that thick, when you go through our records area and you start dealing with the claims that are being rather contentious, where a claim has been denied or it has been retracted, and you start finding a claim file that is this thick, you are talking hundreds, if not thousands, of documents. You are going to have an adjudicator going through that?

Just as a bit of a rhetorical question, I wonder why hearings and WCAT are not making use of this imaging technology. Whenever they have a file come to them, they get a paper copy.

Mr Cleary: We have had some in here in the ombudsman's committee that go well beyond that, back many, many years with no settlements made.

Mr Arnott: I have a couple of questions. The first is a simple one. When I call the Workers' Compensation Board and speak to a claims adjudicator and get a commitment that I am going to get a call back in 48 hours and I do not hear for a week or whatever, whose fault is that? Is it Alan Wolfson's fault?

Mr Mucci: I think when a claims adjudicator is inundated with a lot of work, when indeed the filter mechanism is not really down to the front-end people, when indeed possibly that same claims adjudicator, instead of receiving assistance from the claims adjudicator assistant, is probably training that assistant, it is on that basis probably why you do not get a call back right away. Probably, even if you did get a call, if you were not there, the whole system would start all over again, because they probably would not tell you how to get a hold. You would have to call right back again and start the cycle over.

Mr Arnott: So they are overworked, then?

Mr Mucci: This is really our avenue, and I do not want to dwell too much on it, because I appreciate the mandate here. But having said that, these people are stressed. You want to be barked at? Call in. These people generally are used to nothing pleasant being said. Nothing pleasant about workers' compensation when you are not being paid, "I think you should be paid," or if an employer is falling in. Give them 200 to 400 in a case load and you are asking that question and they are being pressured, they are not going to call you back unless they absolutely have to.

Mr Arnott: If they made a commitment to call me back, that is when I get extremely frustrated. I wish the commitment was not made if they cannot keep it.

Mr Mucci: I think we are talking in terms of almost apples and oranges here. Go back several years ago; the commitment would have been there. That was pride, the integrity, the empathy for the injured workers for sure. It was there. Now that people are not doing that, it is a system in chaos right now.

Mr Arnott: You have been quite critical about some of the senior people, some of the vice-presidents, etc. You stopped a little bit short of it, but you almost called for some blood-letting, some changes at the top.

Mr Mucci: Did I?

Mr Arnott: Yes. I felt you did. Maybe you could correct me if I am wrong. Was I mistaken in that?

1700

Mr Mucci: You are right. I think that justification for what went on in the past, I think it is a shared view. I cannot help but think that Alan Wolfson did this all on his own. He has some disciples here. He brought some of his own people in, some of his own front-line people in. I think that indeed calls for a change.

I would look less critically towards those of the senior vice-presidents who indeed have had their lifelong career at the Workers' Compensation Board. I make no mistake about that. But for persons who were here for possibly a short time, only to move on, and do the damage, whether it be under his auspices or not, I have no sympathy at all for them.

Mr Arnott: I think you talked about the morale problem also partially coming from the fact that there was not enough consultation with some of the people who were administering the actual policy. I guess my concern might be that if there was a wholesale change at the top, I would think there would be a great deal of confusion on a short-term basis, and a great deal of change that people would have to come to grips with and it would not eliminate the morale problem, I do not think.

Mr Mucci: If I may suggest this: certainly this government has been in power for some time now and I do not know whether we should allude to it as a honeymoon, but let me suggest that indeed there should be some changes and soon. The people of Ontario, the workers of Ontario, the employers of Ontario, want some changes. My vernacular might be awkward. I do not suggest maybe staging, if you will, dismissal of certain persons, but today that consideration has to be made. Okay?

It has to be a situation where we are certain we have some new people up there—Odoardo and Brian, I do not know that they can do it on their own. Some direct consultation with a number of people will have to take place here, and I suspect that when the essence of these senior vice-presidents is clearly known, it will be easily ascertained that changes will have to be made.

Mr Allan: If I could just add to that point, you are talking about people being adversely affected by change.

We have been under constant change for the last three years. There is nothing that remains unchanged.

In the document Workers' Compensation in Ontario: System in Transition 1985-1990 that was referred to earlier, Mr Wolfson was almost bragging about the fact that 90% of his management had not even been in their job for two years. We have a lot of government politicians who talk about running it like a business. Do you think a business would survive very well like that?

If employees could see change and they could see a light at the end of the tunnel and realize that it is not a train, that would be a very positive change and it would help morale.

I will give you one example. Vocational rehabilitation strategy—I cannot help coming back and harping on it because that is where I have worked for seven years—they came out with policies and changes which were contradictory in terms of the service delivery.

The Workers' Compensation Board has obstacles in rehabilitating people and getting them back to work. Employers do not like to hear "workers' compensation." If you go in there and apply for a job and you mention WCB, that is the quickest way to get your application in the garbage pile.

We have programs which have worked, eight- and 12-week industrial-setting assessments, on-the-job training, during which time employers get full coverage under the second injury and enhancement fund if they are injured. By the way, that is under discussion right now to be abolished. But those programs came in, and after a year, management at the board had to realize that their programs, which they were told were not going to work, are not working. And they had to change them back, essentially, to where they were at beforehand.

You look at the situation with commutations of permanent disability awards, where in less than two months we had a complete flip and another complete flop, diametrically opposed to each other.

If people see change that is going to be progressive and will be beneficial for the workers and employers of this province and for the employees there, trust me, it will be very well accepted.

Mr Arnott: So you are suggesting that there be some sort of a moratorium on policy change so that people can catch their breath.

Mr Mucci: If I may, we are suggesting indeed that change still has to take place in an ad hoc fashion. I think the big picture policy and the strategy as such, yes, it should definitely be stopped. But I think maybe we should revisit some of the policies and strategies, maybe not just simply abolish them. We can even look at Bill 162 again and maybe do it right.

The Chair: Thank you very much for your time, for your written material and your response to the various questions. We appreciate your coming here today.

Mr Allan: We have documents to leave with you afterwards, which you might find interesting, on vocational rehabilitation case loads across the province, off the board's computer system.

The Chair: Take care.

KITCHENER-WATERLOO INJURED WORKER'S GROUP

The Chair: Next is the Kitchener-Waterloo Injured Worker's Group. Good afternoon. Please let us know who you are.

Mr Sweeney: Good afternoon and thank you for giving the Kitchener-Waterloo Injured Worker's Group an opportunity to appear before the committee. I am taking an English course this winter, so please excuse the accent.

The Chair: Hey, we might find ourselves in the same classroom.

Mr Sweeney: What I have prepared was—I never actually prepared it; the group prepared it and I was asked to present it. It is very brief and concise. The problems that we encounter as injured workers are many. We tried to pick out some of the ones that are foremost.

Answering machines should be abolished. Answering machines only slow down services to clients. The WCB claims that it will get back to injured workers within 48 hours. This is nonsense. WCB staff are unable to access the file, read it thoroughly and get back to the client within this time frame, plus the fact that it is virtually impossible for the Workers' Compensation Board staff to get an outside line. What does the injured worker do for that phantom 48 hours? Sit by the phone? WCB staff often claim that they have called the client. These statements only lead to further delays in client services.

I also have down here excerpts from a letter sent to the former Premier from the staff of the WCB at 2 Blois Street. I am quoting from the staff themselves.

"We are committed to the WCB's mandate to provide service on a timely and humane basis, but are unable to do so under the present circumstances.

"It is essential to an organization such as the WCB to maintain its reputation of a credible and stable service centre. Unfortunately, this is no longer the case.

"Workers, employers, union groups, social service agencies, MPPs and the general public are increasingly disillusioned with the WCB as problems in service mount and satisfaction with services plummets.

"Delays in decision-making on claims entitlement are unnecessarily resulting in the expenditures of interest payments to the injured workers at an unprecedented rate. More importantly than the waste of WCB funds is the present situation of injured workers having medical treatments discontinued due to the non-payment of accounts.

"The staff at WCB are experiencing marked stress in handling the strategies, with personal impact on their positions because internal policies have not yet been developed to handle a bill (Bill 162) which has passed in legislative January 1990.

"The organization as a whole has no more credibility with the public as they witness a drop in service provision and inconsistencies in and the lack of policy."

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With regard to integrated service units, these are the injured worker's groups' comments:

This service has been in effect for two years now and still the service is ineffective and has not yet been provided.

resolved the problem of better service. Windsor WCB is an example of this failure. Therefore, it should be removed and the staff replaced with qualified personnel.

Claims adjudicators must make decisions within the board's definition of a "reasonable time frame." This cannot be accomplished due to the assumption that they have high case loads and are overworked. If indeed this is the reason, then this problem is compounded by the implementation of WBS and imaging system, thus creating havoc with inaccessible downtime in the computer system, which in turn has a drastic effect on all areas of service delivery.

Claims adjudicators' numbers are being reduced and vacancies filled by assistants unable to make rulings, given the scope of their job descriptions. This is also part of the board's restructuring, which has only resulted again in further poor and inadequate service.

Access to injured workers' files: Requests for injured workers' files can take up to six weeks to process, which in itself is ludicrous. Once the worker or representative has the file, memos have been removed. It is not the claimant's complete file, thus creating more delays in preparing appeals or objections to the board's decisions. I personally have received two files from WCB, and they do not match. This type of incompetence occurred once, okay; on numerous occasions, then one begins to question the ethics of the WCB staff.

Local WCB offices: All local offices of the WCB should be able to assess claims and make decisions. They are geographically closer to the situation—doctors, hospitals, employers—and can access these areas much quicker than Toronto. Thus, decision-making is completed and decisions given more promptly.

Toronto WCB office staff: It is common knowledge that the staff complain about their workload and backlog of claims. A major contribution to this so-called dilemma is the inability of the staff to consider the human element of the injured worker. The claim number has replaced the human being. They are inexperienced and have never received the proper training. I do not know the qualifications the WCB demands when hiring new staff. They certainly require professional training by agencies such as the Injured Workers' Consultants and the Industrial Accident Victims Group of Ontario, both in Toronto.

Claims adjudicators: These inexperienced individuals have too much power. No single staff member of the board should be allowed to make decisions that devastate the life of any injured worker. These decisions are made on what appears to be a theoretical basis. Input of upper management, who have more experience and practical knowledge, does not seem to be utilized or considered. Adjudicators can, without any fear of contradiction or remand, disregard the opinions of physicians, specialists, and even the WCB medical staff.

Medical assessments should be conducted in the injured worker's locale, thus eliminating the expense involved in travelling to Toronto, and an injured worker would receive impartial assessment.

In summary, it is ironic that an agency mandated to serve and promote the worker does not offer this courtesy.

We are a most concerned group of injured workers. We had been promised fairer and just treatment from the NDP prior to the last provincial election, if elected. To date, we have seen changes made at the executive level of the Workers' Compensation Board, which is encouraging, although we continue to wait for some positive changes that will directly benefit the injured workers across the province.

Our own mandate includes to constantly remind the government of the day that we will continue to fight for a more fair and just system of compensation and respectfully demand that the government act now. We have waited long enough. We deserve compensation for life because our injuries are for life. Any questions?

Mr Ramsay: I have been a legislator now for six years and I represent a northern riding where we have had through our office about 400 different cases because of mining and forestry accidents. To me, doing any type of reform with the WCB is going to be a tremendous challenge. I was wondering if you see any other method of compensating people for the injuries they have. I am asking you maybe just to think beyond what we are talking about here today with the WCB. Do you think there might be a better way of helping people who find themselves disabled?

Mr Sweeney: Yes. First of all, you could abolish or scrap Bill 162, which would take legislation. That was one of the biggest fights we had. I spent seven years in New Zealand. They have a universal compensation scheme which is an excellent scheme, but this is Canada. Bill 162 can be repealed; it can be amended. It would take up, I think, a lot of time to amend it.

Mr Ramsay: You mention New Zealand and the universal accident and sickness program they have there. I am also very interested in that. I think that would be something that maybe our committee should be looking at. If the government is not, maybe it is something we could start to look at. Unfortunately, we do not have the time to do the thorough looking that is necessary.

It is too bad that legislative committees do not have more power, where all the parties could work together and work on something like that, because I bet you we would have a lot of agreement here between at least maybe two of the parties, maybe the third also, to really investigate that. I think people should be compensated regardless if they are injured on the soccer field on Saturday morning or at work. We waste a lot of money in trying to determine where the injury was or if it is congenital in any way. We waste a lot of time. We spend a lot of resources where we should be directing those resources to the people who are suffering. A universal system might be the answer.

Mr Sweeney: One of the problems we have had is that the employers foot the bill for workers' compensation. Injured workers have absolutely nothing to do with it whatsoever. We do not contribute. If we contributed at the source, a percentage of our salary, then we would have a much better chance. Everybody is entitled to compensation, of course, but the employers dictate the terms. Bill 162 proved that. The employers said, "Get this bill through and get it through quick." There were public hearings and

what not, and I think they accepted 300 out of 600 organizations that requested to be heard. The Minister of Labour of that day—Sorbara, I believe his name was—said, "Have all the hearings you want, but Bill 162 is going through." He told us personally that we were carrying the cross for other injured workers who were coming up, that accidents happened every day, every six seconds, I believe.

Mr Cleary: Gentlemen, I do share your concerns. I do work with a group of injured workers in our part of Ontario, and some of the things that you have mentioned I have heard many times before. But in your opinion, if you got your wish, is that where you would start, on Bill 162, or would you start at other parts of workers' compensation?

Mr Sweeney: I am sorry I missed it. I am deaf also. I should have explained that to start with.

Mr Cleary: Did you hear anything I said?

Mr Sweeney: Bill 162 and that you worked with injured workers.

Mr Cleary: I guess what I said was that I share some of your concerns and that I work with a group of injured workers back in our part of Ontario. I go to their monthly meetings occasionally when I am there. I have heard many of your concerns before and I guess that I had asked some of the other groups, "If you had a wish list, where would you start to try to improve the system?"

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Mr Sweeney: I think the start has already been made by the changes at the top with the board, the executive level, the president, the chairman and vice-president. There is a lot of driftwood at 2 Bloor Street that should be weeded out. Do you know what I mean? They have been there for a long time and they were put in by governments of the past. It is time they were gone.

Mr Cleary: So that would be your wish?

Mr Sweeney: I have a lot of wishes. I wish I could go back to work and become part of society again. That is one of my wishes. Unfortunately, that is not the case.

Mr Cleary: How long is it since you have been injured? How long have you out of work?

Mr Sweeney: This is the 15th year. Very briefly, I fell 280 feet. It was a simple, straightforward accident, and I am fighting the board today for benefits. This is inhumane. Alex Landry here is a 100% burn victim and he is fighting the board today. The human element is gone. We are a number, and that is how you are treated, as a number.

Mr Landry: There are a lot of things at the board that they do not even show us. They try to fight, so they do not show us what is there. There are a lot of benefits there, so why do they not come and give it to the people who are 100% disabled and say: "There, that's what you are eligible for. Now you have to prove that you need it." It would be a lot more simple that way. They would save a lot of money too. But you have to fight every step of the way. By the time you are done, you are 200 years old and you are still surviving and those buggers there are getting well paid to stop everything for you. That is not right. I do not believe in that. But I am only a number.

The Chair: Not here, Mr Landry.

Mr Arnott: I wanted to continue this line of questioning that Mr Cleary initiated. I was wondering if you could both talk about when your injury occurred. I know, Mr Sweeney, yours was 15 years ago, but could you describe some of the obstacles that have been put in your way by the board?

Mr Sweeney: I do not have the time.

Mr Arnott: Do it as briefly as you feel you can, in terms of getting some of it on the record.

Mr Sweeney: It is really tough to break it down. I think as an injured worker, a genuine injured worker, we are guilty until proven innocent. We have got to prove to an employer or to the board that we have been injured. In the law of the land, if you rob a bank, there are five or six stages of appeal to the Supreme Court of Canada. We have two.

Mr Arnott: Did you have difficulty proving that you were hurt on the job in your own instance?

Mr Sweeney: I am still proving today. Every day we have got to prove. If we request the clothing allowance, for example, you have got to prove to them that you need clothing allowance. These are the small things that are important to every injured worker, not only to serious incidents. The older injured workers have been totally neglected. If they were injured in the 1950s and the 1960s they are totally neglected. There is no indexing of pension or what not, and it happened 20 or 30 years ago.

Mr Arnott: Getting back to the service that is provided by the board, I have been saying to a number of the presenters some of the frustrations that I encounter when, as a member phone the Workers' Compensation Board. Some of the things are you do not get a call back when there is a commitment that you will be called back; when there is a file missing and they promise to locate it within X number of days and you never hear from them until you make the next step to make inquiry; when a file has to be walked downstairs and they say that is going to take 7 hours. You are experiencing this as well?

Mr Sweeney: On a daily basis. In Kitchener-Waterloo, we have the injured workers office. First of all, we are a support group and we counsel injured workers and do our best through our MPPs. I must say, with all due respect, the last six months has been much easier than it has been for the last 20 years, because you are able to deal with your local MPP. That may sound a bit political, but that is how we find it. We can sit and discuss it with our MPP. Prior to that, we could not.

Mr Huget: Aside from the injuries you are actually disputing now and those problems that obviously those injuries are causing you, can you give me an indication in terms of what effect this has had, the disputes and the delays on yourself, on your family, on other people you know, in terms of how all this stress and combination of stalling and putoffs and doublespeak, if you like, and arguing what that has done to your personal life and your family life and those you know in the Injured Worker's Group?

Mr Sweeney: It is utter hell. It is sheer hell. That is what it affects injured workers. It is devastating if you have problems receiving benefits, if your cheque does not come. Injured workers are human beings. They have commitments. They have bills to pay. It leads to all sorts of things. It leads to alcoholism and it leads to drug abuse. It leads to wife beating, wife beating, suicide in two or three cases.

Mr Huget: Two or three cases that you know of?

Mr Sweeney: Yes, that I know of. The last one was in 1989, and the day after the man blew his brains out, the WCB gave his spouse a cheque. I do not know whether it is a coincidence that they made their decision after he blew his brains out.

Mr Huget: A little late.

Mr Sweeney: It is devastating. It is not just a feeling; you are treated as third-class citizens. We are told to go to hell. WCB will tell us to go to welfare.

Mr Huget: How do you feel about that?

Mr Sweeney: If there is a problem with his claim and an injured worker says, "I have got commitments, I have got bills to pay and the baby to feed and what not," they say, "Go to welfare." That is not the answer. The social welfare system, the welfare system in particular, is getting run down right at the moment, so why should we be thrown out of that heap? We are on our own heap. The majority of injured workers are living below the poverty line. To go back to your question, it is devastating. It devastates the family and the community, and social life is virtually zero. The fact that some of us can get around and walk is an achievement.

Mr Huget: Injured workers have appeared before this committee, and I think have appeared before many committees, and you have expressed the same concerns over and over again. In your view, why does the board not listen? Why is no one listening, first of all, and second, if the board is not working for you, who is it working for?

Mr Sweeney: I think the board is working for the employer. It is a business. It is a business that lost \$70 million recently investing in the British pound system. If they were going to invest \$70 million in the British pound, they should have called me. I would have told them not to do it.

I have nothing against the employers. They foot the bill, and it is pretty high, but if the financial experts at the board throw away \$70 million, they must be pretty smart. They made 3%. I make more than 3% in a regular bank. I think we all do. But we do not hear too much about that. We hear they paid out \$2 million in overpayments. The media got it and it was headlines. We did not hear too much about the \$70 million they lost.

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Mr Cooper: The main point of your submission seems to be the time lines. You have talked about 48 hours saying telephone tag, which usually amounts to a couple of weeks by the time you get in contact with each other, and in letter writing it could take even longer. You are looking at three days either way. Then they are promising to have a turnaround time of 12 weeks to report back with a decision. Now you say that maybe the idea might be to

go to regional or local offices. Do you think that might help or do you think they might just be saying, "We will make a quick decision and put it off and then we will discuss it over the next six months"? That is basically what has been happening. Do you think that is a logical choice, to go to local or regional offices?

Mr Sweeney: I do not think so. It would be nice, but the local or regional offices do not have too much say in the matter. For some reason or other, all decisions come from Toronto.

Mr Cooper: So that is not an option. So one of the solutions to fix the system was to put in these time lines, and to get rid of the time lines you would go local, where they could review it right there in that area.

Mr Sweeney: Yes.

Mr Cooper: And that is really not a proper solution.

Mr Sweeney: No, but it decentralizes. You know, decentralization, the proper staff in there—and qualified staff I guess would help. It would save a lot of travelling for injured workers plus it would save the board money.

Mr Cooper: Just for the record too, coming from a factory, I know I used to live from one paycheck to the next, which means I had nothing in reserve. So when you are injured, with this 12-week turnaround time, where is your comfort? There is none, right? So that is what you are being faced with. Welfare is not a solution, especially if you are trying to pay off a mortgage, because the first thing they do is tell you, "Let's get rid of the house." That is what I am getting in my office now.

Mr Sweeney: And not all injured workers qualify for welfare. If you own your own house, they tell you to sell your house. I own a racehorse. They say, "Sell your racehorse."

The Chair: Mr Cooper used to live from one paycheck to the next. I still do. I would like to find out what he is doing right. Mr Waters, please.

Mr Waters: You have been working with injured workers for some time and there is a perception out there, I guess, that everybody is out to beat the system. Is it your experience that there are a lot of phoney claims or is it your experience that most people who are injured are truly injured and deserve compensation?

Mr Sweeney: There is abuse that goes on. Percentage-wise, I do not really go much by percentages, but it is like every other system: people abuse it.

Being the president of this injured workers' group, if I find out about abuse, I call Toronto and give them the name and claim number of the person who is abusing the system.

Mr Waters: But do you see any way of taking that out of the system, of eliminating it, other than your personal efforts? Is there any way the WCB could look at that?

Mr Sweeney: I do not know. If you can spend six months in Florida and collect workers' compensation, I do not know how they do it. The board has got investigators.

Mr Waters: One of the other things I would like to talk about is what I call the great paper chase; that is,

trying to find out where your file is in the system. It seems to travel around and around. Is a worker ever asked or informed as to the movement of his or her file from one adjudicator to another in advance or do they just go into the chase?

Mr Sweeney: Not really. I have experience of injured workers who call up their adjudicator one day, a Mr Smith, and they will tell you that Mr Smith is no longer an adjudicator; it is Mr Jones now.

Mr Waters: But you are never told in advance. You just get into the great paper chase and run around after it.

Mr Sweeney: I do not know why they keep changing adjudicators.

Mr Huget: One quick question. In your brief in the section entitled "Claims Adjudicators," you say, "Adjudicators can, without any fear of contradiction or remand, disregard the opinions of physicians, specialists and even WCB medical staff." Can you give me an example of that?

Mr Sweeney: No, but I could send it to you if it would be of any help. When I represent the injured workers and request the file from the board, it is written there that some doctor on the board had recommended an assessment for a permanent disability pension and the adjudicator would say no. That is on the file, memos, numbered.

Mr Huget: So he clearly has overridden the physician's recommendation.

Mr Sweeney: Yes. And it can work the other way, to the worker's advantage. They would recommend something and then the adjudicator will say no and pay the worker. The only time the adjudicator will go with the

medical adviser is on the degree of disability after a medical assessment, and the physician will say it is a 15 disability and the adjudicator accepts that. But otherwise they have the so-called power, which is scary, that one man or one woman or one person can make a decision in Toronto that can drastically affect someone else's life in another part of Ontario. This is 1990. I thought those days were gone. That was one of the reasons I came to Canada. That is how it goes.

The Chair: Thank you very much, Mr Landry and Mr Sweeney, for your written materials, for your comments, for your responses to questions. You will undoubtedly be among the first people to get a copy of the report when it is finally prepared after all the comments have been made and the committee mulls over the matter. Thanks for coming here. Have a safe trip home.

Mr Landry: Thank you for having us here, too.

The Chair: Take care, my friends.

Mr Sweeney: How do we get out now? We had trouble getting in; how do we get out?

The Chair: Well, you might as well wait until around 7:30. Either that or talk to the Minister of Transportation about the 401 and the congestion on it.

Thanks to the committee. We meet 3:30 Wednesday. Members of the subcommittee could please—I am sorry. It is 4:30? Holy zonkers, that does not leave a whole lot of time. In any event, if people could come 10 minutes early to the subcommittee to just sort of talk about any new matters, if we can, let's do it.

The committee adjourned at 1739.

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Legislative Assembly of Ontario

First Session, 35th Parliament

Official Report of Debates (Hansard)

Wednesday 5 June 1991

Standing committee on
Resources development

Workers' Compensation Board

Assemblée législative de l'Ontario

Première session, 35^e législature

Journal des débats (Hansard)

Le mercredi 5 juin 1991

Comité permanent du
développement des ressources

Commission des accidents
du travail



Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 5 June 1991

The committee met at 1633 in committee room 1.

WORKERS' COMPENSATION BOARD

Resuming consideration of the designated matter, pursuant to standing order 123, relating to the Workers' Compensation Board.

The Chair: We have two groups making presentations today. The first is the Labourers' International Union of North America, Local 183; the second is the United Brotherhood of Carpenters and Joiners of North America.

I should remind these people and others listening that the scope of this review is a limited one. It is a review of procedures of the Workers' Compensation Board that impede the provision of efficient services to workers and employers. I would ask that people making presentations restrict themselves hopefully to 10 minutes, maximum 15 minutes, to leave sufficient time for some healthy discussion.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA

The Chair: We have Dan McCarthy with us from the Labourers' International Union of North America. Please start and we will listen carefully. We have a written submission from you. Then please stay so we can ask some questions and get some answers.

Mr McCarthy: On behalf of the 14,000 members of Local 183 of the Labourers' International Union of North America, I thank the standing committee on resources development for the opportunity for input on the issue of service at the Workers' Compensation Board.

Rather than read from the text you have in front of you, I would like to outline the perspective I bring to the standing committee. As in-house counsel at Local 183, 90% of my work is with the Workers' Compensation Board. As we are principally a construction union, it means I deal almost exclusively with integrated service unit 4 and have been for the past year and a half.

I think if you have looked at my comments, you will notice that they are perhaps a bit technical. Rather than making sweeping statements about the board and its agenda, I have tried to focus on roadblocks that I have noticed within unit 4 and the others with which I deal.

The comments, therefore, come from a familiarity with the personalities in a unit and with the number of times that case loads are switched. I can go through any number of files and realize that I am dealing with my third or fourth case worker in the course of six months. I am also privy to offhand comments from board employees, because we have built up a rapport over the last 18 months, so that I usually know when someone is carrying over 200, sometimes 300, files. Unfortunately, that is all too often.

With regard to staff placement, I think the last one I got as a May telephone listing, and I was told it was obsolete

when I got it. That gives you an idea of how people are moving around, even within a particular unit.

In terms of technology, I am sure you have heard a lot about the imaging, which I refer to on page 2 of my submission. The thing I would like to highlight is that what is good in one aspect, multiple access, is terrible for decision-making. I am sure that when people in your constituency offices are preparing submissions, you can see them with remnants of a WCB file, where they have pulled out the three most important medical, the four most important memoranda, the previous decision, and perhaps an assessment from vocational rehabilitation. They have them lying out in front of them, and they refer to them constantly as they prepare the appeal on behalf of your constituent.

Now imagine you have a screen in front of you and you can only have one of those pages at one time, and each of those pages comes from a different category. Because everything is on machinery, it can often take you three to four minutes to get that one page in front of you to visualize it, and then you try and memorize those pages so you can compare the conflicting evidence on memo 5 and memo 15. It will give you an idea of what an adjudicator is up against in terms of using the imaging system to make a decision.

Further, my understanding is that we are still at a point with imaging where you cannot directly image on to the screen. All paper has to go through a different department to be scanned to be back on the electronic file, so if a worker writes a memo in the morning and sends it off to be scanned, he may not get the memo back for 48 hours. If you happen to call in, they will say: "I just did something on that. I remember it. I wrote a memo. You're going to have to call me back in a day and a half when it is back on the screen and I can tell you what it is," and that is reasonable. When you are working with hundreds of files, you cannot remember everything you have done on each one.

You have probably heard more than enough on the answering machines. I think my small comment on the answering machines is that the implementation is probably more important than the technology. What came in with telephone answering machines was the introduction of adjudicative assistants, who were all brand new and returned the phone calls. They knew nothing about how the board works, and they knew nothing about the file. There is nothing more frustrating than getting an adjudicative assistant and trying to say, "Well, no, you have overlooked A, B and C," and they go on: "Well, I don't really know this. Let me get back to the adjudicator," so you just have one more go-between. You not only have a machine; you have a person answering the calls you leave on the machine who does not understand the file. I think if you are going to introduce technology, you are going to have to have methods of implementation well thought out.

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My comments on communication are simply that I do not think interiorly they work very well between those who make policy and those who implement it. It is the same with the implementation of decisions. The hearings branch is at 80 Bloor Street West, and sometimes it can take months to get a decision that is made there implemented back at 2 Bloor Street East. When a worker hears that he has money after a two-year wait to get to a hearing, it is spent. I would like to close the file myself. I would like to say, "We finally got this done," and close it and put it away, and not be dragging it out from the closed-file section to fight about getting the money through.

With regard to rehabilitation, I speak particularly from a construction point of view, where our membership develops special skills that do not transfer out of the construction field. When it comes to rehabilitation, they are often facing extreme obstacles of limited education, language difficulties, and little understanding of alternative employment. They are accustomed to working in an environment where they can speak their language, where they work with their friends, where they know what they are doing, and this leads to innumerable problems. If you ask them, "Can you work?" they can only think of one thing, building forms again, or climbing bridges, or being on scaffolds, and they will say no. They will not understand that the question is meant, "Do you think you could do modified work if it existed and you had been retrained for it? Therefore we can give you money if you say yes." They do not understand that, nor should they. They know what work is. They have done it all their lives, and they know they cannot do what they did before.

I think when you are looking at somebody who has worked for 20 or 25 years in construction and you send him off to a functional evaluation, where he is doing tests or he is told he cannot do tests because there is too much ethnic bias in the tests, or he does not have the rudimentary skills or sophistication in English or mathematics, what message are you sending to that kind of person? It seems to me the problem is that the board has set up steps A, B and C, and step B is this functional evaluation. Everybody goes through it. There is no streaming. There is nobody saying: "This person is 57 years old. He worked in construction for 30 years. He has no education. He does not have the command of the English language. He is going to need specialized treatment." What are we doing sending them off to put pegs in a board? All it is going to do is exacerbate the feelings that they have about not being able to work. It is going to lower their self-esteem even more, and it is not the time to do it, so I would suggest that there has to be some streamlining.

I have made these points, I think, in greater length in my submission, but I will just leave it there and try to answer your questions.

Mr Huget: I noticed with interest your comments on the vocational rehabilitation process in its current situation. In terms of if we had a perfect world here, what would you specifically like to see in that vocational rehabilitation process as it applies to construction workers?

Mr McCarthy: I would like to see a form of streamlining so that immediately upon vocational rehabilitation they do some kind of initial assessment in person, so kind of contact with the person who assesses, just rough up front, what their particular skills are and what their needs are. If you are dealing with somebody who is 60, 62 and is financially in good shape, then I think you want to approach that construction worker much differently than you approach someone who is in his late 30s or early 40s who, in terms of education and language skills, is in the same position as the person who is 62, but of course looking at 20 years in the workplace, so that right off, you do not send the 62-year-old person to the functional evaluation. You try and say, "Now with what kind of training can we get them back into work?" Protecting their pension is going to be important, those kinds of things, for a person nearing the end of his working career. So you identify needs up front and then you stream them accordingly.

Mr Huget: Would it be your experience, or your view at least, that construction workers have a much more difficult time for some of the reasons you mentioned in terms of thinking about the concept of rehab and alternative accommodations? Is there enough emphasis put on the human side of that, understanding the stress that these people are under in comparison to other industrial workers, for example, when there is a threat made on their livelihood in terms of an injury and being able to make informed decisions about alternatives for the future?

Mr McCarthy: I think the construction workers face problems that are worse than those of industrial workers. With industrial workers there is a better chance for reinstatement because the principles of accommodation are more thoroughly understood in the industrial area, that you can actually change a physical workplace. There seems to be the impression that construction is slugging it out and it has always been that way, and that there are not that many ways of accommodating workers. We have seen photographs of U-shaped shovel handles so you do not bend over, but I do not think I have ever driven down a street and seen one in action on any crew.

In answer to your question, I think the construction worker faces more difficulty because there is less chance of getting back to the trade with accommodation. He is aware of that and feels that his life as he knows it is going. Unfortunately we begin to see the development of a lot of psychological problems, a lot of chronic pain problems which in the long run are far more expensive to employers and to the system.

Mr Huget: Would expanded, specialized counselling in your view go a long way to help in that situation?

Mr McCarthy: I think the early intervention thrust of Bill 162 is good, but it has to be meaningful; it has to be human. It is not talking to somebody through his 15-year-old son and saying: "Well, what about these jobs? What about assembling something in a factory?" and then waiting it in on the form and sending the form in and then don't hear back for six weeks.

Mr Dadamo: I have a question that quite possibly should have asked when we met with the first group

Monday. We talk about imaging. We talk about trying to make it a little bit easier for the adjudicator or whoever else handles the files at WCB. What would we do if we didn't have the imaging system? Have you ever toyed around with the idea of another system?

Mr McCarthy: The advantage of the imaging system is that you do not want to lose is multiple access, the fact that a pension adjudicator can be dealing with a pension issue at the same time as a claims adjudicator is dealing with a claims issue, so there is no doubt that having multiple access is a good thing. It would seem to me that what would expedite the decision-making would be if you could print parts of the file that an adjudicator might need. For example, they could review the file and say, "In making my decision, I am going to need the following memos, the previous decision, and these four medical reports." Then somebody else produces hard copies and brings them to the adjudicator's desk so that they are dealing with the imaged file but they have also got the key documents in front of them. They are not carting tons of paper around, and they can just dispose of them once they—I suppose there is a certain waste to the environment, but we are dealing with human beings, who are easily more important.

Ms S. Murdock: I am interested in the upgrading aspect. I know what it has been like in my riding of Sudbury both pre-Bill 162 and post-Bill 162, and I am wondering what your observations are.

Mr McCarthy: Which specific aspect of upgrading?

Ms S. Murdock: Specifically, my riding has a fairly high number of second-language Canadians. They have difficulty, so that a lot of them end up in the upgrading program, where they basically start from whatever level they are at and they are trained. Now pre-162, of course, it went on for a fairly lengthy time; post-162 it is now limited. I do not know how my experience has been. It has not been all that beneficial, depending on how the teaching has been done. But I do not know what other areas are like and I would like your opinion on how it has worked with construction workers.

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Mr McCarthy: By and large it has not. Upgrading is working best with those who have managed to pick up a fair amount of English already. My experience in this is that I have had several younger workers in their 30s who have had quite severe accidents, but because socially they tended to mix more in and out of the specific ethnic community, they have picked up much better English skills and they seem to do well in upgrading. Post-Bill 162, it is a bit of a fight because they are not giving them enough time to really get their skills up so they can take a course at George Brown. It is a problem.

Mr Wood: Most of my questions have been asked by George there. But just briefly on page 2, revolutionary and expensive innovation by imaging is delaying the process of adjudicators without a hard copy where you can lay out the hard copies and compare them all on a desk without having to fight among them on the screen individually?

Mr McCarthy: That has been my experience, yes, and these are comments and discussions I have had with individual workers at the board.

Mr Cleary: First of all, I would like to thank you for your presentation, Mr McCarthy. The one thing that I had circled here Mr Huget had already answered. I agree with what you said on number 6, especially with the older workers because I have dealt with a number of them. I guess my second question would be on Bill 162, your opinion on that. Is that workable? We have heard all kinds of different comments in this room. Some say it should be scrapped; some say it should be reworked. I would just like to get your opinion on it.

Mr McCarthy: With regard to Bill 162, the most positive thing I can say is that the emphasis on early intervention and on a sports model of medicine, where you get to workers early and you make them understand that rehabilitation in terms of physical rehabilitation may cause some pain, as opposed to the old system of treating it conservatively, giving them drugs, letting them stay at home and having the desertion sort of psychological affects move in, I think that is its most positive part. Where I find Bill 162 unworkable is that the deeming aspects of the future economic loss awards are problematic, particularly when you look at the ideal type I have just given you of a construction worker who has limited education, limited language skills.

It is going to be years before you assess what future thing they can get into and whether or not they can get into it. They have ridden past all those checks—check at two years, check at three years. The person is still in school. How can you say how much they are going to lose at the end? How can you say if they are going to be able to pick up a second language successfully? We do not even know that, so it is going to be pretty hard to give reasonable and reasoned future economic loss.

The other thing is the people who got caught in the interim under subsection 135(2), the hurdle that you have to show that after retraining you can make 90% of your previous salary. Construction workers make good money. You are not going to come out of George Brown and start at \$35,000 or within 90% of that. That is just a reality. So anybody who, because he worked hard in a unionized sector and had a good wage, is penalized, and you are penalized twice. First of all, they do not collect 90% of their salary when they go on compensation because they are beyond the limit, and then, because they are a high-wage earner, they cannot come out of a course that would give them a decent living. They cannot get retraining for it because they cannot get over the hurdle. So in terms of Bill 162, I think the retraining aspects need some drastic reworking. I think the thrust towards the early intervention and the sports model of medicine is positive.

Mr Cleary: One other short question: What would be the first step that you would take to try to improve the workers' compensation?

Mr McCarthy: The first thing I would do is spend my energy on vocational rehabilitation, because my understanding of statistics is that 75% of claims are still handled

relatively efficiently and people get their money and they are off it for two or three weeks or two or three months, and then they get back to work. The biggest expense in terms of human beings has to be those who cannot return to their previous occupation.

I think the retraining has to be where you spend your money, where you put your most qualified people, and you try to get people who speak a variety of languages working up on the front lines. I think I made that comment at some point in my paper, that the problem with the wage scale of the WCB is that the more proficient you become and the more you show you are a worker of stature, the more quickly you are removed from the front lines.

When you walk in as a worker, you talk to the telephone clerks who are brand new—the highest turnover—or you talk to the initial adjudicator who is brand new because the senior one has moved up to a better position. There has to be a way of rotating senior people with experience through the front lines so that there is some kind of training going on, on the job, as a problem solver, as a trouble shooter who is right up on the front lines and has the experience.

The Chair: Thank you, Mr McCarthy and Mr McCleary. I said Mr McCleary, Mr Cleary. I got McCarried away. My apologies. Mr McArnott.

Mr Arnott: Thank you, Mr McChairman. Mr McCarthy, I want to thank you very much for your McPresentation. I appreciate your comments and I would like to ask a question about the vocational rehabilitation suggestion you had.

My family has been in the construction business for, I guess, about 62 years and I worked my way through university spending summers on construction. I never saw a serious accident; I saw a few close calls. I think I know something about construction workers and that sort of thing.

I would like to submit that your suggestion that vocational counsellors be more sensitive to the individual needs of their individual clients might be expanded to include not just construction workers, but also I can think of mining, heavy primary manufacturing, timber extraction, which all may employ individuals who have limited education, lack of language skills, little understanding of alternative employment. Would you agree with that?

Mr McCarthy: Yes, the resource sector would certainly fit in with the same needs.

Mr Jordan: I am sorry, I came in late and did not hear the prelude to this discussion, but something that seems to be following through is the problem with the adjudicators being overworked with too many cases, with up to 300 sitting on their desks waiting to be dealt with. I do not understand the operation of the Workers' Compensation Board that well, but I would like to know what special abilities an adjudicator has, so that the doctor at the home location where the person lives cannot do an assessment and fill in some forms and send them in. What is the problem with that?

Mr McCarthy: The problem is that the compensation board is there to compensate for work-related injuries. The

issue is not exclusively, "Is there an injury?" but, "Did it injury happen at work?" So if you are asking what a doctor cannot provide that an adjudicator has to provide, it is that it is more than you had an injury; it is the determination, "Did it happen at work?" There is the whole problem with proof of accident where somebody was on a work site working alone when the incident occurred. Did it happen at home? Did it happen on the way to work? Did it happen at work? Those are the kinds of issues that adjudicators are caught up with endlessly.

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Mr Jordan: Do you see a solution to this funneling everything into this one point?

Mr McCarthy: I think you are right that adjudicators are overloaded, and that always exacerbates things. It develops what I would refer to as a "squeaky wheel" principle, in which those who have representatives—I know that I am one who calls and says, "I am a lawyer," and you listen to a little more quickly, I think, or I am dealing with one unit and have several hundred files on the go and they know me quite well, or it is an MPP's office who is calling. My own sense of justice is, what about the workers who do not have somebody and are not a squeaky wheel and are not being greased? That is the real problem.

Mr Jordan: That is the part that I resent. I had on occasion last week in the constituency office where an individual came in and he had been waiting for three months for a \$4,500-and-some-odd cheque. After a phone call, he had the cheque the next day or within two days. Just because the phone call came from the member's office, I do not think should be a reason.

The Chair: Ms Murdock, is there something that is very urgent and fast?

Ms S. Murdock: Everything is urgent in the WCB. Case conferencing, do you get any case conferencing in terms of service areas, where your case worker will discuss certain files with you on a regular basis?

Mr McCarthy: I do not do it on a regular basis, no.

Ms S. Murdock: It is done, though?

Mr McCarthy: Not that I know of.

Ms S. Murdock: Okay. It is done in some areas around the province. I just wondered whether in your experience it was.

Mr McCarthy: No.

The Chair: Thank you very much, Mr McCarthy, for coming here this afternoon. Your comments are undoubtedly going to be of great value in preparing the committee's report. You will undoubtedly, or at least hopefully, be among the first people to get a copy of that report. Once again, thank you and we look forward to the next time we have to talk.

I would like to mention, and the committee and people joining us here this afternoon should know that Steve Mantis, who is one of the newest appointees to the Workers' Compensation Board, is with us this afternoon as a spectator from Thunder Bay. We are pleased to have him here and appreciate the interest he is showing. We thank

very much for dropping in and saying hello and seeing what is going on.

Ms S. Murdock: And the vice-chair.

The Chair: The vice-chair has been here almost daily, and that is almost needless to say. The Chair was here quasi-daily and the vice-chair has been here almost daily. In particular today, we have Steve Mantis from Thunder Bay, and we really appreciate that.

People should make themselves coffee if that is their wish.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

The Chair: Perhaps we could have the United Brotherhood of Carpenters and Joiners of America. Tell us who you are, please.

Ms Crimi: I am Olga Cardile Crimi and I am from the Carpenters' Local 27 in Toronto. I assume you have all got a copy of my submission.

The Chair: Yes, ma'am.

Ms Crimi: I would even be happy to continue with the questions that were already asked—they were quite interesting—but I will start with my statement and we will take it from there.

I will say though that I have been with the carpenters for about four months, so I am just starting to get a feeling for what is happening on the outside. I was a claims adjudicator at the board for about three years, so your question whether there is quite interesting as what goes on internally and maybe we can talk about that too.

I have been asked to appear before this committee to discuss and comment on the procedures of the Workers' Compensation Board which impede the provision of efficient services to employers and particularly to injured workers.

As the co-ordinator of workers' assistance programs, part of my job involves preparing and representing members of the Carpenters and Allied Workers—Local 27 in dealing with the Workers' Compensation Board.

In order for me to remain abreast of the policy and procedures of the WCB, I subscribe to its operational policy manual. According to policy 01-01-05 of the manual, this section discusses the board's operation policy on decision-making.

The policy adopts four basic principles: (1) determine a worker's entitlement to compensation; (2) determine classification and assessment issues; (3) communicate such decisions to the relevant parties; (4) communicate reasons or delays to the relevant parties.

These four principles are to be used by the claims adjudicators and the hearings officers in order to make entitlement decisions. Decision-makers, and I quote, "are required to make decisions as quickly as possible. These decisions must be based on all pertinent and available evidence from employer and worker (if applicable) but prompt decision-making is not to be sacrificed for the sake of complete documentation. Entitlement decisions are therefore to be made as quickly as possible, but in no case

later than 12 weeks after the registration of new or reopened claims, or after the receipt of the objection."

Simply put, the 12-week criterion is not being met, and in most cases the adjudicator does not communicate relevant information to the relevant parties.

If I ask myself, as an injured workers' representative, what "efficient" means when dealing with the Workers' Compensation Board, "efficient" means prompt and fair decision-making.

Training decision-makers in interpreting the WCB Act is essential in providing efficient service. Last year, the WCB did increase the number of staff by hiring case assistants. At the same time, they did in fact reduce the number of decision-makers. My understanding is that there were 339 claims adjudicators. They were reduced to 226 and replaced with about 113 case assistants. The problem with that is the reduced number of decision-makers. The case assistant is not in a position to respond to entitlement issues.

When I call to speak to the claims adjudicator, I either get meridian mail or, in some ISUs, I get the general telephone clerk. I spend five minutes with the general clerk simply trying to explain what I am calling about and then leave a message. If the case assistant calls back, I find I just repeat what I have told the telephone clerk, because it is the responsibility of the claims adjudicator to respond to entitlement issues.

As a workers' representative, I have taken the liberty of introducing myself by letter to the unit director, stating that I will be representing the carpenters of Local 27. The claims adjudicator will still not release information unless a signed consent form is on file. This definitely impedes efficiency, given that the injured worker may have to come in to see me and sign a release form before I can proceed. It is not always possible for the injured worker to come to our office if he or she is disabled.

Another recurring problem I am facing regarding telephone inquiries is that in some cases, where I have made several attempts to contact the claims adjudicator or have been awaiting a decision for a prolonged period, I will usually try to contact the manager in charge. They also have meridian mail and in many cases, even though I have left a message that I have had difficulty resolving the case through normal channels, the manager does not necessarily call me back directly, but has the claims adjudicator call back. This defeats the purpose of contacting the manager, and I feel it demonstrates a lack of responsibility and professionalism on the part of the managers who do not return their calls.

In terms of correspondence, I will usually wait two to three weeks for at least a letter of acknowledgement, only to find when I follow up the case that no one has reviewed the file or seen my letter. The letter may be as simple as requesting access to the injured worker's file. From the time the WCB receives my letter and refers it to the access specialist, I may wait between six and eight weeks before obtaining the claim file. If I am presenting an objection to the decision review specialists, I may wait a further eight to 12 weeks for a decision. Access to an injured worker's file must be quicker to obtain in order for us to be effective in assisting injured workers.

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Given the limited time I have today, I simply wish to state that the other areas of concern I have, and which I feel impede the efficiency of services provided to workers and employers, are:

1. Entitlement is delayed because the claims adjudicator waits several weeks to obtain a medical opinion from the unit medical adviser.

2. Files listed for investigations can take up to six weeks before the claims adjudicator sees it again, and at that point he or she still needs to rule on entitlement to benefits.

3. Files which are in the process of being reviewed by one claims adjudicator get reassigned to another adjudicator even before the decision has been completed.

4. There is a lack of communication between the case worker and the claims adjudicator. If the WCB is serious about rehabilitating injured workers, then the use of retraining must be more positive. The role of the case worker is to look at the vocational rehabilitation aspect, but at the same time the claims adjudicator rules on entitlement. The vocational assessment by the case worker has a strong impact on benefits; therefore, the case worker and claims adjudicator must work together. With the introduction of Bill 162 yet another level of adjudication has been introduced in the form of an FLE—future loss of earnings—adjudicator. This is another area which must be addressed in terms of how they will collaborate with the case worker and claims adjudicator.

5. Pension ratings, especially for chronic pain, are taking months to schedule. The rating for non-economic awards are not being considered until a policy has been established. The imminent arrival of Bill 162 was known for some time prior to its becoming law. However, the Workers' Compensation Board administration did not provide adequate training and has still not established a policy on how to assess these awards.

Now let me retract a little bit here. There may be a policy but the adjudicators whom I have spoken to so far who have claims for injuries that were sustained in 1990 have no idea what the policy or procedure is about, the ratings for the economic and non-economic loss awards. They are just sitting there.

On a final note, I wish to be somewhat constructive in my criticism today. No doubt there have been major changes at the Workers' Compensation Board in the last few years which have affected the quality of service we receive. The impact of technology, the changes in legislation brought about by Bill 162, the introduction of evening shifts and the numerous pilot projects have impeded efficiency in service.

One must look at both the service delivery and the administrative process to understand what is hampering service delivery. The complex administration impedes decision-making partly because of the lack of communication between policy and operations. The ergonomics involved in looking at imaged files eight hours a day affects the thoroughness involved in making intense decisions.

In conclusion, I hope I have generated some discussion by addressing some of the problems injured workers and

employers are faced with every day when dealing with Workers' Compensation Board.

Mr Ramsay: Thank you very much for your presentation. I find it fascinating that you used to be an adjudicator at the board?

Ms Crimi: Yes.

Mr Ramsay: We are hearing consistently, through many of the presentations, presenters saying that the board does not put its most experienced people on the front line and therefore this is why we are getting many appeals at that down the line these things are corrected through the appeal process. I am wondering, is there some sort of official maybe quota system at the board, that it has some sort of bell curve and says: "Listen, at the first take there is no way we would approve more than 66% in general. I am cognizant of that when you are making decisions. You can't go approving all these things"? Is there some sort of quota, do you think, out there?

Ms Crimi: Not at this time. When I started at the board, the adjudication strategy that was introduced in 1989 did, I think, address the problem that the new people coming into the board are given the responsibility of looking at initial entitlement. It is true it is a problem, when you are not experienced, to nip it in the bud. If you do not adjudicate the claim properly from the beginning, it just snowballs into a problem.

They seem to have tried to look at putting more experienced adjudicators at the front line. That does not seem to be happening. The intent was there; I do not see it happening, though. That is part of the problem that I see. The monitoring too that is supposed to be going on by the technical advisers or the manager does not always seem to happen.

So far, I mainly deal with the construction unit. I have been pretty pleased with the callbacks and the answers have been getting from the managers. In other units, cannot seem to get through to them that all I want to do is call to resolve the problem and I cannot seem to get across the idea that I am not just calling to cause trouble or give someone flak. Each unit seems to be different on how it operates and who it puts in certain positions. There is not a co-ordinated effort.

Mr Cleary: You have been on the inside and are now working on the outside. What do you feel the biggest problem is at the Workers' Compensation Board?

Ms Crimi: First of all, I would say it is poor training initially and who they hired initially as trainers. Now we understand the training happens outside of the board, George Brown College, and I have to question how effective that is and what the intent was in doing that. I certainly think they should have people from the inside who have gone through the ranks, the positions, and are qualified then to be instructors. Part of the other problem is training when changes occur, such as Bill 162. Staff do not seem to be kept abreast of the changes that are happening and how you adopt those changes when adjudicating a claim. That is another problem. I really have to stress the problem of training staff at this time.

Mr Cleary: Since you mentioned Bill 162, what is your opinion of it?

Ms Crimi: I have concerns about reinstatement for those in the construction industry. It does not exist. It could have been there primarily for injured workers who are in high-risk jobs, such as those in the construction industry, and it does not exist at this time. Yes, it is harder to close a file where one is requesting vocational rehabilitation services. At one time, you would close the file if they were not co-operating. It is harder in that sense. It is a harder to get the benefits and the retraining.

Retraining still seems to be a dirty word at the board. It seems that the case worker, for whatever reason, has somewhat of a tunnel vision, that you first start with a job search and use what you have. Sometimes you have to look at the economic situation before saying, "Look for a job." If there is nothing out there for those who are fit to work, how can you ask an injured worker to continue to conduct a job search? Why not take advantage of the situation and consider training at a time when things are pretty bad in terms of the job market? There does not seem to be that flexibility in looking at the individual. It is a very general outlook on how you deal with an injured worker when they are fit for modified work.

Mr Jordan: I would like to refer to the last page. In the third to last paragraph, you point out that, "The complex administration impedes decision-making." Could you elaborate on that a bit?

Mr Crimi: I will look at one of the things I have looked at, the policy—just looking at the beginning, at my introduction—about a 12-week guide to adjudicate claims to make a decision. Operations may have come down and funnelled down to the unit that, "This is what we want." Is it realistic? Is 12 weeks even appropriate? Is it too long? Is it too short? That is coming from operations, which may not really know what is going on in the front lines. My understanding, from speaking to people at the board, is that the hearings officers refuse to even abide by that policy, that it is unrealistic to follow this 12-week policy where it includes the hearings officers. Here is an example of a procedure that is being completely ignored. Are they collaborating at the management level and operations when making these policies?

Mr Jordan: It would seem difficult to deal with cases in a numerical manner—that is to say, "I can deal with 12 cases a week"—when they could be so varied in their complex nature that numbers, to me, would not be a very good way to measure. However, thank you very much for your comment.

Mr Arnott: I would like to thank you also for your presentation. I sometimes wonder if all of us who try to advocate on behalf of workers do not have a jaded view of this. Do you think anybody is getting decent service from them?

Ms Crimi: Yes. I certainly do not want to be all negative today. Yes, there are adjudicators out there who are doing a thorough job. It is unfortunate that morale is as low as it is right now at the board, for numerous reasons, and that the turnover has been as it has, but yes, there are

qualified people there. You have to realize adjudicators are interpreting a legal document day in and day out and if there is not the proper training you are going to run into problems. That is one of the comments I wanted to make today.

Yes, I do not want to be completely negative. There may be managers in certain units who are not encouraging their staff to a certain—

1720

Mr Arnott: Would you mind telling us what was the extent of your training prior to your assuming a position as a claims adjudicator, and what time frame was this?

Ms Crimi: It would have been in October 1988. It was an 11-week training course and the expertise of the trainers at the time was questionable.

Mr Arnott: You would have questioned the extent of the training even at that time?

Ms Crimi: Yes.

Mr Jordan: And the quality?

Ms Crimi: The quality.

Ms S. Murdock: I have just a comment and a question at the same time. I want to thank you very much. It is a pleasant surprise to unexpectedly see a female. I expected a male. It is my own bias, I guess.

The comment I want to make is that the CUPE local for the Workers' Compensation Board has put out a questionnaire to its membership. One of the things was with regard to information that you have been giving us today about the feelings of the adjudicators, both on pensions and claims, who have to implement Bill 162. In their questionnaire, they have found that 19% of the people who have to work with it felt they did not know enough about Bill 162 and 43% felt uncomfortable with using it and not sure of the information they were having to use. It goes along with what you were saying earlier. That is over half of the people at the board who are not comfortable.

In terms of your point 5, on pension ratings, how would you expedite assessments? If you were able to go into the board and change it, in terms of expedition of pension assessments, how would you go about doing that?

Ms Crimi: I think one thing may be to rely a little bit more on the treating physician, not so much maybe the family doctor but the specialist. A form does go out, on occasion, to the injured worker which his specialist is to complete. If there is not time to have individuals come in to be assessed, maybe it should at least start as a paper review. You cannot appeal something you do not have a decision on and you are waiting and waiting, but maybe that will be the initial assessment and rate at that level.

Ms S. Murdock: It is interesting, but I do not know how one would go about it. In that instance, I know that in Sudbury, my riding, they tried to inform doctors how to simply fill in a form properly, because that is another major problem we have been having. Only two doctors showed up out of hundreds in the city.

Ms Crimi: So far, I understand only amputated claims get a paper review in terms of assessing a pension award. Maybe we will have to expand that. I do not think the

solution is always increasing staff or getting more doctors. Maybe they do need some more unit medical advisers, but there will never be enough, so we will just have to change how they review them.

Mr Waters: You were talking before about the morale of the board and the adjudicators and you mentioned the assistants. Do you see any value to having assistants or should they all be properly trained and be adjudicators?

Ms Crimi: In my opinion, I think they should be adjudicators. My understanding is that the claims adjudicator is quite leery to accept the information the case assistant gets over the phone because the final responsibility lies on the claims adjudicator and that adjudicator is going to have to use that information. Maybe it is a matter of time, where attitudes will change and experience in terms of the case assistants will change, but the way it stands right now, the claims adjudicators have a hard time accepting their information. They are only the information gatherers. They are not in any position to make decisions. It all lies on the claims adjudicator, so I have to wonder, is there duplication there? Yes, the person may be calling the doctor, but that file still has to come back to the claims adjudicator to make a decision.

If they are still not happy with the information the case assistant got, that case assistant will get the information again, will have to recall that doctor or employer or injured worker. That can also be frustrating on the outside. What is the doctor to say? "You just called me two days ago. What else do you want? I don't have time. I have an office full of patients here." So I have to question if there is duplication in having a case assistant. They are only responsible, at this time, for clerical duties, but at the same time they reduce the number of claims adjudicators, who are the decision-makers.

Mr Waters: I have seen files everywhere from about that thick. I have never seen them under that thick, though. I guess I have a problem with the duplication or the waste, because we seem to go back to the same people for the same information and they write it up at the same time. Is that standard?

Ms Crimi: Seeing memos repeated over and over again?

Mr Waters: Or you need a doctor's report and it seems the doctor says the same thing—bang, bang, bang, bang—churns out the same thing. Obviously, in a lot of cases, it is not going to change.

Ms Crimi: Are you talking in terms of initial entitlement, or are you looking at someone who is trying to appeal and trying to get information from his doctor in support of his compensable injury? There is a difference in how one interprets, and there is a problem with the doctors providing the information the adjudicator needs to determine entitlement.

Mr Waters: Do you have any idea how to deal with the doctors so they understand the information the WCB needs?

Ms Crimi: That is a good question. How do you encourage doctors to sit down and write thorough, concise

reports and not just fill out a form that says "mechanical back strain"?

Ms S. Murdock: It is not by paying them \$25.

Ms Crimi: It is not. Exactly. How do you encourage them to provide the information the board needs? That is a good question. I do not know. Is it always the dollar sign? I do not know. Again, we are talking in generalities. There are doctors out there you would phone, and no problem, they will give you whatever you want and be very clear and supportive and answer any question you have. There are others and is just a, "Don't bother me," kind of attitude.

Mr Waters: In your experience—and I know you started in 1988, so you probably do not have personal experience but probably had contact with people—was the training of the adjudicators ever any better? It seems they feel that they are not, as you said, kept off the—

Ms Crimi: Before I got there?

Mr Waters: Yes.

Ms Crimi: I think things were, from my understanding, a lot better. The major changes started to happen when the integrated service units were developed and everyone was funnelled into different units. That is when a lot of the problems started to happen. That is not to say it was not a good idea. In the end, to have doctors, the rehab counsellors and the adjudicators on the same floor was a good idea.

Maybe the problem was too many changes at one time—meridian mail, Bill 162, night shift, pilot projects regarding medical strategy, revenue strategy, adjudication strategy. It was just too many major changes at one time.

With Bill 162, the time I was there we had a two-course at a hotel and most of the questions the adjudicators were trying to ask the instructor which—no fault of the instructor; they were senior adjudicators at one time. I cause it was a new bill, they just did not have the answers because the policy had not been created. There was no policy, no procedure, and we were just told: "Hold your questions for now. We will get back to you." That is in the time I was still there and then I went on maternity leave, so I can't really say what happened afterwards. What was the point of that? I do not know. They just did not have any answers.

In terms of imaged files, as Mr McCarthy from Log 183 indicated, certainly it is a good idea to have imaged files but it is a good idea to have them while they are, in my opinion, small files. As more complex documents come into the file, maybe they should have a blended case load on their desk, some hard files and some imaged files. Is that an option? You find when the system goes down, which is frequent enough, you are twiddling your thumbs there. I am sure the adjudicators are going crazy knowing, "I have 300 files to work on and I am sitting here doing nothing because the system is down."

1730

Mr Huget: We have heard several presentations that have stressed a morale problem within the board staff, and certainly suggest that many staff members are somewhat less than happy campers, if you will. What, in your view, other than case load, is contributing to that morale problem?

Ms Crimi: One of the problems was definitely the introduction of the night shift, working a shift of 2:30 to 10:30 at night. While I was there, the attitude of the board seemed to be that if you were not willing to take this night shift you were not going anywhere. Any promotions that would come up would be for those who were willing to take an evening shift, and any available job that came up during the day—somebody would leave or there was a promotion—the understanding was that it would only be considered if the person had worked the night shift, and not the person who may have been more qualified who had a day position and had applied for the job.

Certainly that was quite demoralizing. When the adjudication strategy came into place, even though the title of the job changed from initial adjudicator and senior adjudicator to junior entitlement and junior benefit, your work essentially did not change, but in some aspects you were demotivated because of the structural change. That can be demoralizing when you have been told, and been patted on the shoulder, that you have been doing a wonderful job, but then you are being demoted. "However, if you will take the evening job, we will give you back your job."

Mr Huget: Is there anything else you can think of that comes to mind?

Ms Crimi: That is it for now.

Mr Huget: Just to close it off, in your view, how much of an impact does employee morale have on the client relationship and the service to the client? Many times we have heard general statements like low morale and all those things, but in your view and in your experience, how much is that impacting on the services to clients, and in what ways?

Ms Crimi: I do not think it does fall upon the client. There are some wonderful, loyal, intelligent people at the board who take their job very seriously. The frustration comes maybe with the volume and the attitude internally, and the directors not being given the autonomy they think they should have in each unit, but I do not think the claims adjudicator takes it out on the clients or the stakeholders out there.

Mr Huget: So you would say that really is not having a negative impact on a claimant?

Ms Crimi: It is more because of the technological changes that impede the efficiency, but it is not intentional.

The Chair: Ms Murdock, real fast.

Ms S. Murdock: Real quick. Actually, when you were there, had shift work started?

Ms Crimi: It was just being introduced. We had completed a questionnaire about that.

Ms S. Murdock: I visited four board offices in the province, and of them, only with one has the director overpiped the two shifts so the adjudicators on each shift can conference for an hour and a half, they are together for an hour and a half. It involves a little bit of juggling in terms of desk space and so on, but what do you think of that idea of terms of shift work, if shift work has to be a given?

Ms Crimi: You are asking my personal opinion. I am sure there are—

Ms S. Murdock: In your experience at the board.

Ms Crimi: There are people who are single and for whatever reason do not mind working an evening shift, but there are a lot of people in my situation, my age bracket with young families, who really do not want to work. Safety may be another factor.

Ms S. Murdock: No. Make it a given that there is a shift, and if there is a shift, what I am asking you is, in terms of the servicing of the case load, what do you think of the idea of an overlapping shift?

Ms Crimi: Where the case assistant and the claims adjudicator meet for about an hour?

Ms S. Murdock: Yes.

Ms Crimi: I do not think that is sufficient time to discuss what work the case assistant has to do and what information they are to gather. When the claims adjudicator comes in the next morning and the case assistant leaves him that particular information to continue adjudicating the claim, I have to wonder if that can work.

The Chair: We appreciate your coming here and the time you have spent with us. It has been, of course, valuable, and will be useful. Like others who have appeared, all things being equal, you should be among the first people to get the report, but Murphy's Law is one of the few laws around here that is kept consistently. All I can say is, we will do our very best.

Now to the committee, before we head back to the chamber, the subcommittee met very briefly prior to this committee meeting. The reason for meeting was to discuss at least one contact that had been made, and that was additional persons who yet want to appear. All of the time period, as everybody knows, is restricted to 12 hours gross time. That is the rule. This is not a usual type of inquiry. It is not dealing with legislation; it is standing order 123, which means a maximum of 12 hours. The subcommittee and committee had already made decisions about the amount of time to be spent on debate and deliberations, which was three hours. That would allow one hour to each caucus, and I think that is appropriate and fair.

The decision of the subcommittee was—in view of the fact that we are this far along and that this is not a wide-open hearing process; it is a very narrow, time-restricted process—that it would not be possible, unfortunately, at this time to let more people join the list of presenters. That would cut into the debate, deliberation and discussion time set aside. So we propose, subject to what anybody might say now, to advise those people and others who might subsequently indicate a desire, that unfortunately, this particular type of process, this standing order 123 process, is not the type that accommodates an open-ended list of participants.

The other interesting thing, of course, is that there has been a remarkable consistency so far in the types of things we have heard, notwithstanding what part of the spectrum the presenters have come from. Those were the sorts of things the subcommittee—and I trust I have put it fairly—considered very briefly today, and its decision was, with regrets, to advise any of these people or groups that they could not be accommodated at this point.

Has anybody any comment on that? It is unfortunate, but again this is a special type of process where there is a maximum of 12 hours. That means we have to be very careful with our time, and the committee has obviously tried very carefully to balance the people appearing before it, so there is representation from all parts of that spectrum of interested people.

Thank you very much, people. See you on Monday. Thank you to those people who are here again this afternoon, Mr Biggin, among others, for their interest, and hope to see you again during the course of these hearings. Take care.

The committee adjourned at 1738.

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**Standing committee on
resources development**

Workers' Compensation Board

**Assemblée législative
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Première session, 35^e législature

**Journal
des débats
(Hansard)**

Le lundi 10 juin 1991

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développement des ressources**

**Commission des accidents
du travail**



Chair: Peter Kormos
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 10 June 1991

The committee met at 1549 in committee room 1.

WORKERS' COMPENSATION BOARD

Resuming consideration of the designated matter, pursuant to standing order 123, relating to the Workers' Compensation Board.

The Chair: Thank you for your patience. Notwithstanding that we started a little bit late because of question period ending later than expected, all four groups will have their full allotment of time with the committee. I would like that you tell us who you are and identify yourselves personally, then spend 10 minutes, 15 minutes at the most, on your presentation so that you leave a healthy and respectable period of time to have some dialogue afterwards. Please go ahead, the Toronto Injured Workers' Advocacy Group.

TORONTO INJURED WORKERS' ADVOCACY GROUP

Miss Gemma: My name is Airissa Gemma and I work at the Industrial Accident Victims Group of Ontario. We are part of an organization of community legal clinics. I would like to start off by introducing my colleagues.

On my left is John McKinnon, who works at Injured Workers' Consultants. On my right is Orlando Buonastella, who also works at Injured Workers' Consultants. He is a community legal worker. Beside him is Mark Barclay. Again, he works at Injured Workers' Consultants. He is a community legal worker. On the far right is Alberto Lalli, who works at the Industrial Accident Victims Group of Ontario. He is my colleague.

I would like to begin by saying that we welcome the opportunity to make submissions to this committee. IWAG is an organization of community legal clinics, and some of the members are going to be speaking to you today. Together, on a yearly basis, we represent and advise several thousands of the most severely disabled and uncompensated injured workers in Ontario.

We are pleased that the Legislature is looking at long-awaited and needed changes involving the rendering of services by the board, but this committee must realize that the major problems facing injured workers require legislative changes and that limiting the reform to administrative procedures cannot ensure fairness to workers. As the Ontario Federation of Labour submitted in its brief to this committee on 29 May 1991, "We trust that the new legislation will be tabled by the fall and we look forward to being involved and having input into the substance of this new bill."

Mr Buonastella: I have been involved in workers' compensation issues for some 12 years now. I was there at the Park Plaza II in the fall of 1987 when the new integrated service unit system was unveiled. Mr Sorbara, Dr

Elgie and Mr Wolfson were there. It was announced as though it were going to bring in a new era of workers' compensation efficiency. The statement attached here in our brief also speaks in grandiose tones about providing "more sensitive and effective services to its clients, particularly injured workers."

Since then, almost four years, the delivery of service has not improved, has not even stabilized from the previous system and has in many respects gotten worse. I think we and you have to also raise the question whether the change from the previous system of having several departments in place—claims, vocational rehabilitation and so on—into an ISU system, a system of integrated service units, has delivered. After four years we have to begin asking the question.

We are not administrators and our expertise is not in public administration. We handle workers' compensation complaints of our clients and of our injured workers, and we can only tell you that people are complaining that service is not being delivered. Not being public administrators and not being experienced in this matter, we cannot tell you the system has failed and there has to be a new integrated system come in or we have to revert to the old system. We can tell you, though, that we have to look at this question. It has been four years and the system has gotten worse. We are saying there should be an outside consulting firm, with genuine injured worker input, that asks some fundamental questions as to whether the ISU system has worked and whether it should be scrapped or whether there should be a new readaptation of the ISU system.

We think that the root of the problem is that the administrative change was brought about from the point of view of a narrow corporate approach to internal organization. That may work when you are making products or material things, but I think when it comes to servicing people it has not brought the desired effect at all. I think what has happened is that the ISU change has come in and has been accompanied by a process of high legalization of the board, where policy changes and a lot of changes have been brought about in all respects with a strong emphasis on legalism.

I think when you combine the legalistic approach that has come in in the last years, with the ISU system with its lack of service, it has brought about a process where everybody is unhappy. Injured workers are really angry because they talk now to answering machines, and you have heard all this. A lot of our injured workers do not speak English so when they hear an answering machine speaking to them in English they give up. So there is a lot of frustration from injured workers about service. Representatives are frustrated. I think board morale is at its lowest point, and we have enclosed a letter that I am sure you are aware

of from board staff that was signed by many people at the board where they are really complaining about their lack of morale. I am sure employers are also coming to you and complaining.

I think the ISU system has some advantages because people have to work together. The concept of integration is not bad. However, it has worked to the detriment of independent decisions. We list on page 2 some of the areas.

Vocational rehabilitation: You recall that the Minna-Majesky task force recommended that vocational rehabilitation be given a higher profile. It was a separate division. What has happened? Vocational rehabilitation has in effect been given a lower profile in the sense that the vocational rehabilitation counsellor now has to consult with the pension adjudicator, with the claims adjudicator and the other members of the team. That independent decision that really belongs to the expert in rehabilitation is often compromised by other considerations, by people who are not coming from the point of view of what is best for the vocational rehabilitation of the worker. So we think that that has been compromised.

Another area is decision review specialists, who are the first level of appeal. They used to be independent; they used to be part of the hearings branch. Now they have been put back in the ISU system. We think it gives them less independence because they are now part of the decision-making unit and they now have to review decisions that are made by colleagues they have coffee with. It puts them in an awkward position, and I think we should look at putting them back into a more independent section, the hearings branch.

Finally, the ISU system has really eliminated counselling specialists. I am sure you have had dealings with them. Many of you have been in the business, if I can call it that, of servicing injured workers for a long time. Counselling specialists have, before the ISU system was put in place, been very useful. If you had a problem, you talked to one troubleshooter. They were assigned to you. Every organization had one troubleshooter; you dealt with one person. Now you have to find out who is handling the claim, and it is a nightmare. There is a big difficulty even speaking to the decision-maker. So we should go back to counselling specialists.

1600

Mr McKinnon: I would like to deal with a couple of short comments which have characterized the reviews of the workers' compensation system that have been conducted over the last couple of years.

One, as my friend pointed out, is the concern for legalism. As a lawyer, and not the only lawyer in the room, I can assure you that it is not the involvement of lawyers which he is taking to task, but we are talking about a narrow preoccupation with questions of legal interpretation and questions of what courts have done in other jurisdictions, rather than a concern about what ought to be done; what is the problem that the legislation is addressing and what are the solutions that are available.

Another of the shortcomings which have characterized the reviews that have occurred over the last couple of years

is the lack of any real input into any of them of injured workers and their representatives. This has been a stumbling block, in our mind, in the provision of efficient services.

It has been I think two years since we have had an opportunity to make a presentation to this committee, and at that time, two years ago, we were responding to Bill 162 and not looking at the day-to-day activities. I think we should in our submission that it has been three years since we have had an opportunity to make a presentation to the standing committee on the day-to-day activities of the board and we hope that this can be done on a more regular basis.

There really have not been in the meantime any more effective channels for participation for injured workers in reviews at the board. The board has only superficially allowed for participation from injured workers' representatives.

By way of example, it sends out proposed policies; what it calls consultation, but then quite frequently the result of that consultation is either nothing or going ahead with the board administrators' original position without any substantial recognition of the input that they have received.

Another example is the bipartite advisory committee which was set up to develop policies under Bill 162. However, on the most controversial issue, and that is the decision issue, or the calculation of the future economic loss award, again, the board went ahead with its administrators' original position, and this has left us with considerable controversy over what the effect of Bill 162 is going to be.

Again, injured workers have a representative on the board of directors, but his hands are largely tied. He receives literally mountains of material in the days before each meeting of the WCB board of directors, which he has to review and provide input on as the member representative of the injured workers' community, but most of the material is marked "confidential" and he is not permitted to show it to the community that he represents. It makes extremely difficult for him to get input from other injured workers' representatives and advocates, and this has hampered our ability to have some input into decisions of the board of directors.

By way of example, the adoption in December 1990 of two apparently contradictory resolutions by the board of directors about the calculation of the future economic loss award shows what can happen when the ability of the people who know what the problems are and the people who have some views on them to participate in the policy setting and the decision-making at the board of directors is limited.

Another problem too with the access through the injured workers' representative on the board of directors is that the current representative is from Thunder Bay and they fly him down sort of immediately before the meeting and they whisk him away after the meeting and he does not have an opportunity to consult with representatives from the rest of the province. There ought to be some thought given to allowing him to more fully represent the injured workers' community on the board of directors giving him time, at the board's expense, in Toronto elsewhere to consult with injured workers' groups. He is certainly not in a financial position to undertake this on

n. As you know, it is a voluntary position on the board of directors.

Recently, we were also told, and again after the fact, that a committee had been established by the outgoing chairman of the Workers' Compensation Board to monitor the board's compliance with Bill 162. We think that there are serious problems with the bill and the question ought not necessarily to be compliance, but changing the bill. The committee that has been established is largely unfamiliar with compensation issues. The only member of that committee with compensation experience formerly represented the employers' advocacy group.

This and the Bill 162 review committee and other reviews of workers' compensation we think ought to be done by people with experience in workers' compensation, and people doing a review of the board should have a mandate to hear what is wrong from the people who know what is wrong and they should have a mandate to fix it, including the mandate to recommend legislative change. This has been lacking in the various approaches to review over the last couple of years.

I think at this point I will turn it over to my colleague Mark Barclay to talk about some of the specific problems.

The Chair: I am going to ask you to please be as brief as possible so that there is a modest amount of time left.

Mr Barclay: Certainly. I am going to talk a bit about what is going on and what is wrong with vocational rehabilitation. I guess the first thing is a little anecdote that my daughter and I had yesterday about the commercial that says you do not go to your florist to get a couch; you go to the right people, obviously. She thought that was a great deal. It is kind of that way at the board. You do not go to a pensions adjudicator to get good vocational rehabilitation and you do not go to a director of an ISU to say whether this course is valuable, but it seems that is what you have to do at the board.

A couple of my examples have to do with clients who were complying with vocational rehabilitation. They were co-operating, whatever that term means, and yet they had a great deal of difficulty. In one case, a person who was on a hard vocational rehabilitation program in school was cut off for no apparent reason. His pensions adjudicator had looked over the case while he was co-operating with rehab and had determined that he would not benefit from this plan, so he was cut off. It took us a month to get the benefits back. He had not done anything new. The board program had been approved and in the middle they decided that he would not earn enough when he got out, so we had to go through an appeal of, yes, he would and we know this and blah, blah, blah. It took a month. He was cut off benefits and he had been doing what he and his vocational rehabilitation counsellor had agreed to do.

In another case, a worker who was an extremely bright, talented nurse, who injured her back quite severely, wanted to become a teacher. The board said no. Her case worker did not. Her case worker said it might be a good thing to pursue, but her pension adjudicator said he thought that really someone with a bad back should not be a teacher. My client complained as far up as the Premier and nothing

seemed to happen. She asked me to intervene and I asked the Ontario Secondary School Teachers' Federation and a number of teachers' organizations whether or not you needed a good back to be a teacher and they suggested that really that was not a requirement that was absolutely essential. In fact, they said it was an ideal job for someone with a disability.

It took us a year and a half from when they first decided that she should be a vocational rehab counsellor, ironically enough, to go to hearings and to win that in fact she could become a teacher and that was in fact an appropriate goal.

Perhaps the most ironic thing is that in the time it took for them to make a decision she got pregnant and had a baby and, further, she was cut off benefits at Christmas because we had appealed the decision and the decision was sitting at the hearings branch waiting to be decided on and they decided that because it was at hearings branch she obviously was not complying with rehab again and so she was cut off benefits on 24 December. It took us two weeks to get her benefits back. Again, a worker complying with benefits in a board rehab plan.

Another worker I know was cut off vocational rehabilitation because of an IQ test that was administered, where he scored 85. As you know, someone with an 85 IQ would not be an ideal candidate for retraining. When it was pointed out that this worker in fact was given this test when he did not have use of his contact lenses and had had an eye injury—basically he could not read the test—it was suggested that the test results might be thrown out and in fact this worker might well be retrainable.

In many cases what voc rehab counsellors tell their injured workers is: "Appeal this. It's not up to me." Our question is, quite simply, why is a voc rehab counsellor having to say, "Appeal this," since it is the voc rehab counsellor who signs the voc rehab plan and is supposedly the person you go to see about voc rehab? If they do not know what is appropriate and cannot recommend what is appropriate, who can? I guess that is all I will say.

The Chair: We have six minutes and change for questions, so we have to be really fast.

1610

Mr Lalli: I just want to say, we can go with examples and nauseam. Like Airissa Gemma has said, we deal with the worst cases, and those are our clients, the people who cannot get any sort of help from the board. Every time the board made a change, it was under this model that they were going to offer justice in a humane and speedy way. However, every time we see a change, there become more and more problems.

For any accident that has to be investigated, it takes at least six to eight months to get a decision. If that decision has to be appealed, it goes on for more than a year. In that time, the person does not have any benefits and has to go to welfare. That is the reality. He comes to our office, we make a phone call, we get an answering machine. And this is the nature of all communication. You expect to speak to a human being; however, you get this machine that gives you 48 hours. So if there is a problem with that cheque that did not come, I have to wait 48 hours for somebody to tell

me why that cheque did not come. In the meantime, the person has no money. The senior worker can not do anything. Every time we hear how nice and speedy things are going to be and how personalized the service is going to be, we face more and more problems with workers.

Before, we could ask for a copy of the board file in order to proceed with an appeal and we would get it within a month. Now, with all the ISUs and all the computers and the photo imaging or whatever, it takes six to eight weeks just to get something. If we do not get a letter giving us the reason why the person was denied benefits, we cannot appeal. We have to wait three or four months just to get the letter to start the procedure for appeal.

In all of that, the situation that is the worst from my point of view is that I deal with immigrants and people who do not speak English. They used to go to the board and have an appointment with the claims adjudicator. Now they cannot do that. If they go, they are rejected. They have to phone and make an appointment. When they phone they get the machine, and so it is like a catch-22. The thing that is so strange for us is that every time we have had an opportunity in any forum with any MPP or political representative, we have said this is what is going to happen. And unfortunately, we come here on that basis exactly. It is not good to say we told you that, because it is not nice. However, that is the reality.

Mr Waters: I had a couple of short questions. I have heard a lot of complaints in these hearings about the adjudicators' assistants, as to whether it is worth while having the assistant or whether we are further ahead to simply hire and train these people to become full-fledged adjudicators.

The other question I wanted to ask was, what is the very first thing that you would do to improve rehab?

Mr Barclay: I think the question about whether adjudicative assistants are helpful is best summarized by, "Why is the person that I am calling not returning the calls?" I get someone else returning a call and it is like someone's secretary returning the call. You phone Mr Jones but you get another name on the machine that phones you back and says, "I called for such-and-such." She or he does not have the file in many cases. They are not helping you, but they have returned the call within 48 hours. Could they be more useful? They could certainly be used a lot better.

If there were one thing that I wanted to do with vocational rehabilitation, it would be to make the vocational rehabilitation counsellors able to make actual decisions as to vocational rehabilitation plans. Usually it goes to a pensions adjudicator to determine whether the vocational rehabilitation plan agreed to is appropriate. The pensions adjudicator should not make that decision.

The Chair: Any other questions, Mr Waters?

Mr Waters: I was going to turn it over to someone else, but I can always ask more questions if that is what you want.

The Chair: You have a chance to ask your second question now.

Mr Waters: No, I asked it in that way. It is okay.

Mr Jordan: My question is also to the gentleman regarding the vocational rehab officer. You are stating, understand it, that he should be able to assess the situation and make a decision. I have difficulty with that in that you then have one person assessing the situation and making the decision. Do you not feel that his recommendation should go to a committee and the pension officer should be part of it? The recommendation of the rehab officer might not be in the best interest of the employee. There should be a pensioner or other members of the committee involved in the final decision.

Mr Barclay: I guess there are a couple of reasons why I do not like the committee structure. The obvious one is that it takes longer to set up committee meetings and have everyone meet. That does not benefit the injured worker.

The other problem I have with it is that what generally seems to happen when someone else gets involved is that someone without expertise makes a ruling. A pension adjudicator may not know anything about vocational rehabilitation, and rules as opposed to a case worker. If case workers are professional enough, they make the decision.

I guess the situation we are seeing now is that pension adjudicators as opposed to case workers are making decisions, so it is just one person who is making the decision and it is the wrong person.

I do not think a committee of six, a committee of three or a committee of four is a better way to go about it. Injured workers tend to know what they want for a vocational rehabilitation plan. I think the consulting is correct there. There is a lot of expertise about functional ability evaluation or retraining that is appropriate. I do not think you need a lot of people consulting on it to decide on an appropriate rehab plan. What you need is the power for people to actually commit the funds. There is no set budget for vocational rehabilitation and there is no set time limit. Really, the vocational rehabilitation counsellors, if they were allowed to operate on their own, could do quite imaginative things. They just are not given that power.

Mr Jordan: But in some instances, I might have a case to be rehabilitated, but it might be a combination of part pension and part rehabilitation so that I would return to my normal income. Would this not enter into it at some stage?

Mr Barclay: The majority of people who would be rehabilitated would have some sort of permanent pension. I think you may be under some misunderstanding there. Most of the people who are getting large-scale retraining, such as a two-year community college course, might have a 10% or 15% back pension. They would get a pension and the question of rehab would be to give a supplement while they are in school to keep them up at their 90%. In most cases, people would already be on a pension when they were going to rehab.

Mr Waters: I would like to know if you feel the board has become too legalistic for a person to actually deal with. Not everyone has a union or an injured worker's representative. I just wondered if on a day-to-day basis you sense the board is becoming too legalistic with its clientele.

Miss Gemma: Maybe one of us who is not a lawyer could answer that. I will give you my opinion and maybe Lando Buonastella will give you his opinion.

I have been in this field for about 10 years and in maybe the last five years we have noted a lot more employers hiring lawyers to do their workers' compensation cases. The issues have become much more legalistic than they were even when I started. It prevents injured workers from pursuing their case because they feel they need a lawyer in order to get adequate representation. In my opinion, yes, there have been so many changes in the last little while that it is difficult to keep up and it is becoming much more so than it was a few years ago.

Mr Buonastella: Perhaps I can just add that we are now facing a system where, from day one, many times any injured workers cannot handle the filling out of the form. The board should hire people who are communicative and make forms that are acceptable and understood by the workers of this province. From then on, it is a process that alienates injured workers. They do not understand the forms; the forms you read are hard for a representative to understand. The farther you go up, the more the system seems to be alienating everybody involved, first and foremost injured workers. I think your committee really has to take this and first and foremost make the system accessible to the people it is supposed to represent.

The Chair: Thank you very much for spending time with us this afternoon. We all appreciate it. Thank you for your patience in waiting for us to start and you will undoubtedly—I should not say that because things do not always happen the way they should. Lord knows the recent list is proof of that. But you should be among the first people to get the report once it is prepared by this committee. I hope you will look at it with interest and perhaps get back to us with further comments. Thank you very much for coming here today.

20

JACK WHITE CONSULTING SERVICES

The Chair: Please tell us who you are, and then 10 to 15 minutes on your presentation so we have time for some conversation.

Mr White: The name is Jack White, currently in my own consulting business. I spent some 18 years with the Canadian Union of Public Employees as a full-time representative and two years as the director of social services for the Ontario Federation of Labour. Prior to that I was with the iron workers' union as a full-time representative, and I come to you this afternoon with some 20-odd years of experience in dealing with workers' compensation.

Let me, first of all, thank you for this opportunity. The atmosphere is somewhat different from when I last appeared before this committee, when the party in power was not, I suggest, that friendly to representatives dealing with injured workers at the Workers' Compensation Board.

The letter I received from Mr Brown indicated you wanted me to speak for five minutes and then allow about 15 minutes for questions and answers. While there are a vast number of concerns one could address, including the act itself, the impact Bill 162 has had and will continue to

have on injured workers and their families, the failure of the board to offer meaningful rehabilitation to injured workers, the problem with the integrated service unit concept, and many, many others, I have decided to limit my remarks to perhaps the most important area of concern to most injured workers, namely claims adjudication.

In the February edition of the Policy Report—that is the report, of course, published by the Workers' Compensation Board—there is an article titled "Timely Decision-Making." On reading that report, my immediate reaction to the article was to ask myself the question, "Timely in whose eyes?" I analysed just what impact a delay in decision-making of 12 weeks would have on some of the people whom I have represented over the years and concluded that 12 weeks is much too long and, I suggest, quite unnecessary.

Just imagine having to wait 12 weeks, plus an additional two weeks for typing and mailing, for a decision. If the worker is lucky and the claim is allowed, he or she would undoubtedly have another wait of several additional weeks before a first cheque was received. I suggest to you, Mr Chairman, that this is most unfair.

I suggest it would be much better for the worker to receive a negative decision within a matter of a few weeks than to wait for 12. A quicker decision would allow for a quicker appeal of that decision.

How long should it take to read a claim file and be able to render a decision? That is the major question. While I recognize the tremendous case load given each adjudicator, with new claims being added on a daily basis—which would indicate the need, I suggest, to hire more adjudicators and have the board pay for their training—it would seem to me none the less that the members of the corporate board who proposed the timely decision-making policy did so with little or no knowledge of what is involved in the decision-making process or the effects such a policy would have on the injured worker.

An adjudicator who is having a problem determining entitlement due to lack of information should be able to notify either the worker or the employer within a matter of days, I suggest, not weeks, requesting the information, and allow a couple of weeks for it to be received. Should it not arrive, I suggest, within a matter of three weeks, a decision should be made.

What I am proposing, therefore, is a decision being rendered within the first six weeks. As already stated, the worker, in my opinion, would be better served receiving a quick, albeit negative, decision sooner than to wait for some 14 weeks for perhaps the same negative decision.

Recognize as well that it is not necessarily the fault of an adjudicator that there are delays in decision-making. The trade union movement must more vigorously attempt to educate workers in the need to supply information to an adjudicator as quickly as possible when requested. But one of the major causes of delay in the system is the employer's right to question every injured worker's claim, far too often, I suggest, without any sound reason. To cause a delay, all the employer has to do is declare that it has reason to doubt the history of the injury and automatically there is a delay.

Now, I am not suggesting that employers should not have the right to question claims of their workers. What I am suggesting is that the board must find a way to weed out those unfounded claims by employers and make it mandatory, perhaps, that positive proof be provided when either submitting the form 7 initially or whenever the information becomes known to the employer and they wish to challenge the claim. This procedure would help speed up the decision-making process, thus improving the system.

If I could digress slightly, I have been involved since February in the training of worker advocates for the Ontario Federation of Labour through a program as a result of the money given to the federation by the WCB and, I guess, the government. I had a session with the machinists' union just this past week. Several of those workers indicated to me that with every claim 7 that is submitted by this particular employer, on the bottom of the form 7 is simply written a little note saying, "We object to this claim." Every one of those claims is therefore investigated.

My daughter happens to be an investigator at the board, so I know what her job is and I have seen her operate. I can tell you that if a worker says there are four witnesses to an accident and that claim goes out for investigation, and one of those witnesses happens to leave on four weeks' vacation, that claim is then held up for four weeks until that person comes back off vacation and is then interviewed.

Recognize, as I say, the employer does not have to give any rationale, no reason whatsoever, only that it doubts the history of the injury, and the board then investigates it. There has to be some better way of dealing with that problem.

If, by way of regulation, a worker were given the legal right to view the form 7 before it is submitted to the board by the employer, thus giving the worker opportunity to discuss concerns raised by the employer, we would also see less in the way of delays in decision-making. Does a worker not have a legal right to see that form 7 before it is sent to the board?

I suggest to you that perhaps with freedom of information, the worker should have that right, and the government, I suggest, should make it mandatory that before that form 7 is sent to the compensation board, the worker be given the opportunity to view it.

These few remarks, I trust, will prove helpful to the government in any future deliberations on the subject of workers' compensation. Thank you very much.

The Chair: Thank you. You have raised some interesting issues.

Mr Offer: Thank you very much, Mr White. My first question deals with the statement you make on page 4 of your presentation that the board must find a way to weed out those unfounded claims. I am wondering if, as a result of your extensive history and experience in this matter, you might be able to share with us one such way.

Mr White: That is a good question. I suggest to you, sir, that if a worker is injured and is given an opportunity to view the form 7 before it is submitted to the board, as that worker's representative I am then in a position to say to the employer, "Why are you doubting the history of this

injury?" If it requires that we go talk to the witnesses that accident, if it requires obtaining further medical evidence, you know, we can perhaps ask for a delay at board, or we can submit the form 7 and say there is further medical evidence forthcoming in this claim.

Recognize that causes a delay. The worker says accident happened this way, and a board doctor says that not compatible. If we knew that right up front, certainly are then in a position to gather that evidence to sub back to the board. Unfortunately, we wait for four months before we find that this is the cause of the delay.

1630

Mr Offer: If I might follow up on this question, I think it you are not advocating that employers should not be able to contest a particular claim at this level.

Mr White: No, I make that quite clear.

Mr Offer: I think also in your response you have indicated that this, in itself, may result in a delay. I guess that question is almost the same as in the beginning. The statement you make on page 4 is really, I think, directed at getting on with making the decision, but the solution you have provided is one which, in itself, might not meet that particular goal. The employer will still have the right, a fundamental right, to contest the claim.

If not here, then certainly it would be helpful for us to see what we might get some suggestions as to how this aspect of your concern might be addressed in a way which would still retain, of course, the right of the employer to contest and if at all possible would speed up the initial determination. I think it might be helpful for us because this is a matter which is of some concern.

Mr White: We recognize that not all claims are legitimate. Certainly there are those employers who quite legitimately say, "We have reason to doubt the history of this injury"; no question about that. But I suggest to you that where that employer simply is objecting for the sake of objecting—unfortunately, as with the machinist the other day, as I said, that employer is deliberately objecting to every claim, hoping the worker will get fed up with the delay at the Workers' Compensation Board, go on week after week of indemnity, which is cheaper, and get off the hook.

Mr Offer: I recognize what you are saying. You always take me right to that point and I say okay, you are saying that there are employers, as I take it in your presentation, that put in a form 7 for the mere fact of putting it in—that is what you are saying—and that results in a delay and that they are doing that for a variety of reasons, but that not all of those form 7s are in fact for that purpose. I think you are also saying that many of them are very well founded.

Mr White: Yes.

Mr Offer: How do you distinguish?

Mr White: I suggest to you, and I suggest that even the board is recognizing, that there are those employers that are establishing a pattern of objecting to every claim. In those cases, I suggest to you that the board should say: "We are not going to deny this claim based on the mere fact that you are objecting. Give to us some concrete, positive pro-

that you have reason to doubt the history and then we will investigate it.

Mr Offer: I wonder if apart from contesting, saying to some employers, "We do not agree with you," if instead of taking that tack, the tack would be to speed up the adjudication process, still thereby allowing the employers to do what it is their right to do, but saying, "The decision will be quicker even if you do provide a form 7 notice." I am just wondering as a possibility whether that is the route to go.

Mr White: Could be.

Mr Offer: Apart from saying to some, "You don't have the right to do this; you don't have the right to put in form 7," for a variety of reasons, we say, "Of course everybody has the right to do that, but what we will do is try to make the system a little bit more efficient, speed up the decision-making process so that which you have a right to do will continue, but the decision will also be speeded up, thereby addressing some of the needs of the employees."

I think those are some of the things that maybe they are trying to do in the court system and in a variety of ways. It is not saying that people cannot enter pleas of not guilty, it is saying that the trial date is going to be speeded up. Those are two very different tacks that are taken, one of which I agree with, giving the person the right to do what is his right to do, but also saying that decision is going to come to fruition as soon as possible.

I say that not so much as a question as a matter of comment. That would be it. You look at me quizzically, Mr Chair.

The Chair: No, I am looking at you with a sense of wonder.

Mr Offer: It is a quizzical look the Chair is casting my way.

The Chair: The point is well made, Mr Offer.

Mr Jordan: My question perhaps is because of my lack of knowledge. Who represents the employer on the board?

Mr White: On the corporate board? There are four members of the employer group on the board. I do not now if I could name them.

Mr Jordan: But there are four people representing the employer.

Mr White: Yes.

Mr Jordan: Then I find it difficult to understand through our constituency office why the employer is not interested—I cannot say "not interested." The injured person is coming to my constituency office for me to see why there is a delay in the action on his case. Where does the employer have responsibility in this regard? The employee was injured at my company. Do I not have a responsibility to see that the action is being followed up?

Mr White: Under section 121 of the act, you have a responsibility as an employer to, within three days, submit form 7 to the board outlining the history of the injury as it has been relayed to you as the employer. There is a question that says, "Do you have reason to doubt the history of the injury?" All the employer has to do is tick that

and there is an automatic delay, there is an investigation. One of the problems probably is that there are not enough investigators as well.

Mr Jordan: Suppose the claim has been approved and I am entitled to my allotment, whatever it might be, but it is somewhere in somebody's basket and my mortgage payments are due and so on and the money is not coming through. Does the employer then have a responsibility to his employee still to see that it is followed up and the money does come through?

Mr White: No.

Mr Lessard: I wonder if you could give us some reason why this objection would be made by an employer right off the bat and an investigation called for. What would be the advantage to an employer to do that?

Mr White: I have been a shit-disturber in the plant, okay, and here is an opportunity to get White. I will object to that claim knowing that it is going to delay White getting any money for four weeks.

Mr Lessard: Just out of spite then, I guess.

1640

Mr White: Certainly. But recognize as well that with the Workwell program and with the new experimental experience rating program, an employer whose frequency of accidents has decreased gets a rebate from the board. So if I as an employer can hide accidents or if I can convince the board that all of the accidents that have happened I have reason to doubt, I get a rebate perhaps. Or if I can get workers to go on weekly indemnity as opposed to claiming workers' compensation, they are not reported to the board.

Mr Lessard: Do you think it would be helpful to at least provide on the form where an objection is made some reasons for that objection?

Mr White: Exactly. That would certainly help.

Mr Lessard: That is not the case at the present time?

Mr White: No.

Mr Lessard: All right. The other thing I think your presentation focused on is the length of time it takes to make decisions. Is that correct?

Mr White: Yes.

Mr Lessard: You have indicated here that even a negative decision would be better as long as it was faster.

Mr White: Yes.

Mr Lessard: In my own experience in my constituency office, when the Windsor office is pressed for a quick decision then almost inevitably that is going to be a negative decision. Has that been your experience?

Mr White: Yes.

Mr Lessard: That does not really provide much assistance either. You are almost eliminating that person's role in the system. Would you not agree with that? If their job is only to say no, then why do we need that step?

Mr White: Personally, I am not convinced that it should take 12 weeks to review a claim, determine that further information is needed and not be able to get that further information within a much shorter period of time. I

recognize that an adjudicator carries a tremendous workload. There was a question earlier about the assistants to the adjudicators. In my opinion, they should all be adjudicators. I forget on which page of my brief I make reference to the need for more adjudicators and that the board pay for the training of those adjudicators. There is a course offered at the George Brown community college. If assistants at the board want to take that course, they are advised that they do it at their own cost. Then there is no job guarantee after they have completed it, and the board is crying for adjudicators.

Mr Lessard: Right. You would agree then as well that there is a need for increased training for adjudicators.

Mr White: Definitely.

Mr Waters: On the same line, sir, once they are trained and we do have qualified adjudicators, because of your longevity in the industry, do you feel they are upgraded on a regular basis sufficiently so that they can stay on top of their case load or the changes in the policies?

Mr White: I would suggest to you that the vast majority of claims adjudicators do not know the act. They know perhaps the regulations and the policy of the board, but if you phone an adjudicator and you quote subsection 3(3), which is the presumption clause, he may want to know what you are talking about.

Mr Waters: So they might know the policy but they do not know the act, so they definitely need more training.

Mr White: Yes.

Mr Waters: One of the things we have heard about from yourself and from others is time lines. Do you feel there should be time lines set for phone messages, for correspondence, decision-making? Do you think that should be set down in stone, do you think it is should be left as it is or somewhere in between, or exactly how?

Mr White: I have a worker whom I have been representing since 1983 and we are still battling with the board. I will pick up the phone to phone the adjudicator to say, "My worker hasn't gotten a cheque," and I get the answering machine. I bang the phone down and I say—well, I will not repeat what I say, but that will happen at least three or four times a day. Then I have to phone that worker back and say, "I didn't get through to the board, but as soon as I do I will get back to you." I am unfortunately not one of those who is even getting my calls returned, so I have an even greater problem.

There was a period when I had a counsellor whom I could call—and that system worked, believe me—where I could phone my counsellor and say: "Here's a claim number. Would you look up this claim and tell me what's happening in it." That works.

Mr Waters: They are no longer there?

Mr White: That has been done away with.

Mr Waters: Would you suggest that that be brought back into the board?

Mr White: Oh, definitely.

Mr Waters: Okay. That case is interesting. Since 1983—one of the things I have found is that there is the

great paper shuffle and no one seems to know where cases are—would you be able to even estimate, off the top of your head, how many different adjudicators you would have on that case?

Mr White: Oh, no. I would not even venture a guess.

Mr Waters: Okay.

The Chair: Are there any other comments that people feel obliged to make or questions that people feel obliged to put?

Mr Waters: I would not mind asking one more. It was the same question I put to the injured workers prior to you. I know that you represent mainly unionized people, but for those who are not unionized, do you think something should be done with the legalistic attitude of the board?

Mr White: Definitely. Recognize as well that a worker whose claim has been denied is advised, "You have failed to co-operate under section 40 of the act," and then maybe they spell out section 40. The average worker may still read that letter and not understand why he or she was cut off. There is really something wrong with a system that is supposedly deemed and beamed at injured workers, a great many of whom do not have English as their principal language. I have represented workers who were illiterate. They get that letter, and of course they do not even know what it means. There should be and has to be a better system found to advise a worker as to why his or her claim has been denied and what he or she can do about it.

Recognize as well that as long as we have the Robt Cronishes and the Richard Finks and those who are making a living off the backs of injured workers, they are going to make it as legalistic as possible, because that makes their money; that makes their dollars.

The Chair: Mr White, thank you very much. This is the first time our attention has been focused so intensively on the issue of form 7s and employers' response to injury and I think it has been a valuable period of time for us. Thank you for coming, thank you for waiting, and we have enjoyed having you here, all of us. Take care, sir.

Mr White: Thank you.

1650

CANADIAN MANUFACTURERS' ASSOCIATION

The Chair: The Canadian Manufacturers' Association. Please tell us who you are, and tell us what you wanted to tell us.

Mr Howcroft: My name is Ian Howcroft. I am the employee relations policy adviser with the Canadian Manufacturers' Association, Ontario division. To my left is Maria Marchese; she is the CMA workers' compensation specialist. To her left is Rosa Fiorentino; she is a member of the Ontario division workers' compensation committee and an employee of Esso.

You should all have a copy of our presentation. Appended to that is a copy of Workers' Compensation in Canada: Facing New Realities. That is a report we issued in 1989. Many of the recommendations are still valid today and I thought it would be useful if you all had a copy of that.

By way of introduction, I would just like to state that the Canadian Manufacturers' Association is unique among employer organizations. We represent both large and small manufacturers from all regions of Ontario and all areas of the country. We also represent manufacturers from all sectors.

With respect to workers' compensation, we have been very active in the debate since the inception of workplace injury compensation in Canada. In 1912, we were one of the parties that made a brief to Mr Justice Meredith on the issue of establishing a compensation system for victims of work-related accidents in Ontario. Further, the CMA was instrumental in proposing and endorsing a voluntary experience rating plan, which has been in existence since 1953 and is currently administered by the board.

Workers' compensation has been and continues to be a priority issue for manufacturers. The CMA has always expressed the need for efficient management of the system in such a way as to ensure that as much of the money as possible would be devoted to compensation for accident victims rather than for administration. It has always been our position that the procedure for adjudicating claims should be simple in order to minimize friction between employers and employees. We must do all we can to prevent accidents; however, when an accident does occur, we must do all we can to ensure that the worker returns to the workplace as quickly as possible.

For the last five years the workers' compensation system has been in a constant state of change. Legislative amendments such as Bill 101 and Bill 162; organizational changes such as the ISUs; the new on-line payment system known as the workers' benefit system and the on-line system for storage of files known as imaging, are all contributing factors to the constant changes the board has been experiencing. These factors, coupled with the vast number of strategies implemented—medical and vocational rehabilitation are examples—have resulted in ongoing disruptions in terms of functioning of the system. For service delivery in general, and the adjudication process in particular, the impact has been inequality and inconsistency of adjudication.

We would like to just go through some of the major problems we or our members have experienced and propose some recommendations.

The first one is with regard to telephone communications. This is the most expedient method of providing and receiving information. However, with the introduction of the voice mail phone systems, the result has been the inability to either immediately access the claims adjudicator to have access to the adjudicator at any point. In cases where files are handled by a night-shift worker, it is impossible to have any communication with the adjudicator at all during the day, or access anyone who could or would be able to deal with the concerns being expressed.

The experience of a majority of our members has been that phone calls are not returned within the 24- to 48-hour period or are not returned at all in some instances. In those cases where there may be a call back, the result is a call back from a case assistant, who for the most part is not familiar with the contents of the claim or is not in a position to answer the questions put to them. The result is the

referral of the call to the claims adjudicator for handling. In terms of service delivery, the result is a further two-day delay in receiving a reply. The problem is applicable to both the adjudication staff as well as the management staff. The use of answering systems also results in the creation of a backlog of calls to be returned.

We therefore recommend direct accessibility to claims adjudicators. It is also important that the client public have access to management staff in cases where there is concern about the delivery of service.

Management staff must be required to intervene in cases brought to their attention and should provide the stakeholder with a reply. The removal of the new phone system is an option to be considered. In the alternative, a system must be implemented to ensure that calls are returned by the adjudicator within a 24-hour period.

Written communication is a most often utilized form of communicating concerns or objections regarding a file. However, objections and/or concerns put forth are neither acknowledged nor replied to. Most often, the reply received is a standard computer-issued form letter which simply advises of the approval of the claim.

We therefore recommend that a system be implemented that would require the immediate issuance of an acknowledgement of the correspondence within 24 hours of receiving the letter. A further letter of explanation should be issued within a reasonable time frame thereafter, outlining the inquiries being conducted to address the issues raised in the correspondence, and a time frame when a complete explanation could be received. It is also imperative that this function be overseen by a member of the management staff to ensure its application.

With regard to case assistants, case assistants are being utilized to aid claims adjudicators in their adjudicative functions. The lack of proper training of these assistants has resulted in a low-level knowledge base, and in many cases they are unable to deal with specifics regarding a claim file, which could lead one to suspect that their function is clerical in nature, consisting of returning telephone calls and other clerical duties.

We therefore recommend that the position of case assistants be revisited with the view of the possible elimination of these positions. The board should, however, assess the knowledge base of those currently in the positions to determine their suitability as trainees for positions in adjudication.

Decision-making and the communication of decisions: Decision-making is, naturally, integral to the adjudication process. However, the provision of full explanations regarding entitlement decisions and, in particular, replies to specific concerns submitted, are not always provided as a course of action. In those cases where one is provided, it is received one to two months after the decision has been rendered and does not always address the concerns raised.

We therefore recommend that all concerns submitted be addressed, verbally and in writing. Letters of explanation should specifically outline the concerns submitted, the board policy and the criteria to be met, and why the decision either complies or does not comply with the policy and/or criteria. Written replies should be provided for all decisions rendered. In cases where there is a delay in

rendering a decision, all parties in a claim should be kept apprised of the reasons for any delays incurred. A quality control system must be implemented to ensure that there is compliance to this requirement.

Sound adjudication decisions can only be rendered with an expert knowledge of the act as well as the policies and criteria established to administer the act. However, the introduction of extended work hours has resulted in the advancement of much less experienced personnel to technical adviser and manager positions during the night shifts.

We therefore recommend that those in senior positions have the necessary experience and expert knowledge to assume the more senior positions. Advancement of individuals should not be the result of failing to receive the suitable applicants. Efforts should be made to ensure that the more qualified are advanced to the positions.

With regard to case loads, in order to render logical decisions it is essential that the number of files being handled are of a manageable size. We therefore recommend that the case load sizes range between 100 to 125 at the entitlement adjudication stage, and a more reasonable level at the benefits adjudication level.

Appeals: All decisions rendered are open to appeal. However, coupled with the delay in receiving a written decision is the delay encountered in the referral of the file through the various levels of appeal. We therefore recommend that the process be structured so as to not only facilitate release of the claim file documents on a more timely basis than is currently used, but also to expedite referral of the files through the various levels of appeal. A time period of one year to have a file reach the final internal level of appeal is unacceptable. A file should be before a decision review specialist, at the very latest, three months post-original decision. A hearings officer should be scheduled within one month from the date of the decision review specialist's decision, and a hearings officer decision should be rendered within one month from the date of the hearing.

Operational policy manual: It is essential that a reference manual be available which provides specific guidance on both board policy as well as procedures for implementing the policy. However, the new operational policy manual provides very little in the way of procedures and guidelines. As well, the manual updates resulting from changes of the board policy are not available for distribution until months after the changes have been implemented.

We therefore recommend that updates to the manual be made available on a more timely basis. More important, the manual should provide more specifics in terms of procedures and guidelines. In its current form, the likelihood of subjective interpretation of policy and inconsistent application of the policy is greatly increased.

To conclude, we would like to recommend that a value-for-money audit be conducted to ensure that the resources of the Workers' Compensation Board are put to their best possible use. Resources are not unlimited; therefore they must be used as productively and efficiently as possible. A value-for-money audit, in all aspects of Workers' Compensation Board matters, would be a start in identifying ways in which resources are not being used

properly, and also in recommending what actions should be taken.

That ends the formal presentation. We would be pleased to entertain any questions that the committee might have.

Mr Waters: You deal with compensation all across the province, I think, do you not, or your group? I was wondering, with the new technology that has been placed in some areas, do you see any change? Do you see that it is going to help? Because it does not seem to matter whether we have the injured worker, labour or management people here; we seem to have the same type of thing. I was just wondering, from your perspective, if you have seen any change with the new technology that is in place.

Mr Howcroft: By the new technology, do you mean the imaging?

Mr Waters: Yes.

Mr Howcroft: To my knowledge, that has some benefits in limited areas, but I think there are a lot of problems associated with the imaging. We have heard a lot of concerns expressed about how well that system is going to work and how well it is currently working. It is leading edge technology and I think it has to be proven how effective it is going to be. It might take several years before that has been demonstrated.

1700

Ms Marchese: As well, I was going to add that the imaging is only available for post-Bill 162 claims anyway. So it is not available for the older claims. There are a great many problems with the older claims, if you look at them in terms of volume especially. Those are the ones, in terms of the problems with communication, that you have the most problems with because you have the most issues to deal with. The imaging deals with relatively thin files right now.

Mr Waters: You were here during the previous presentation, I assume. Looking at that and form 7, I know from my past experience that one of my employers said the same thing, that it was going to question every claim. Could you give us some reasons why employers are doing that? Personally, I do not believe that it is so much of an employer-employee relationship; I think it is frustration. Would you just like you to clarify some of that.

Ms Fiorentino: From an employer perspective, I can honestly say we have only ever checked off that square. We felt it was really necessary and felt that the claim was not work-related and did have proof of that fact. It is not just a matter of checking off the square. You do have to provide a letter before they will even start the investigation. We found that by checking off that square, nothing was done; the claim is still processed. But we always attach some kind of letter explaining our reasons for possibly wanting the claim denied.

Mr Howcroft: Most employers want to ensure that the workers who are injured in their workplaces get compensation as soon as possible. Many of the members whom I deal with assist their members to make sure that they do get the benefits as soon as possible.

Mr Waters: I have asked the other side and now I will ask you. How do you feel about the legalities of dealing with the board? Do you find that it is wrapping itself up in much in legalese and not actually fulfilling its mandate, making it a little more difficult for your client?

Mr Howcroft: It is very difficult for our members at this time. It is very legalistic. I heard the comment that was made previously, and a lot of our members would agree with that. Employers do not appreciate having to go out and retain a lawyer to have a workers' compensation issue settled. It is very expensive for them to do that and it is a bit of a benefit to the system.

Mr Lessard: I just wondered if you could make some further comments about what you mean by a value-for-money audit. Could you give us some recommendations on what you think that means, what you would hope to accomplish as a result of that? We have heard previously that it might be helpful to have a consulting firm review service delivery. Is that something you have in mind by that recommendation?

Mr Howcroft: Have a consultant look at the provision of services, the revenue side, all aspects of the Workers' Compensation Board. The Workers' Compensation Board is an enormous structure. There are thousands of employees. It deals with billions of dollars in assessments, a multibillion-dollar investment portfolio. We feel that all aspects of the Workers' Compensation Board should be put under the scrutiny of an independent consultant who could do a complete audit and make recommendations as to where funds would best be utilized, what should not be done, what improvements could be made to the provision of services and in the administration of the Workers' Compensation Board.

Mr Lessard: Has that ever been done, to your knowledge?

Mr Howcroft: I believe there have been some audits one several years ago, but I do not know how much attention was taken, if any, from those results. But I think there have been enough changes in the last five or six years that would warrant another audit being conducted.

Mr Lessard: I have not have an opportunity to look through the recommendations that you made previously, but can you point out some of the major ones you may have made that have not received any attention or have not been acted upon?

Mr Howcroft: You mean in the Facing New Realities paper?

Mr Lessard: Yes.

Mr Howcroft: One of the major issues is the unfunded liability. That has continued to escalate and that is something that has to be addressed immediately. It is over \$9 billion now, I understand, and it cannot continue to increase. We have to take action now and a value-for-money audit would look at that aspect. We also have proposed that the vocational rehabilitation be implemented as soon as possible. I know Bill 162 was to address that, but a lot of the vocational rehabilitation sections are not being

implemented as envisioned. That is something that also has to be addressed.

Mr Offer: Thank you for your presentation. I have a question around the whole issue of case assistants. In your presentation, I think you have recommended clearly that you would like the case assistants to be eliminated. My question is whether you come to that conclusion as a result of a lack of training or something else. I am wondering if you might want to share with us the reason why you would advocate the elimination of case assistants.

Mr Howcroft: I think it is twofold. The lack of training is one problem. It is also, what exactly are they doing? Is it an effective use of those resources? Adjudicators are the ones who will be making the decisions. The assistants try to help out, but all they can do is return a call and say: "The adjudicator is too busy to speak to you right now. I don't know the answer. I can't help you but I'll pass on your concern." You are just creating more work for people. Again, it is not the best or the most effective way to utilize resources.

Mr Offer: That answer is, I would suggest, quite consistent with your final recommendation of the need for a value-for-money audit with a view to seeing if the dollars are well spent in terms of case assistance. Or do you feel it is more important that there be more adjudicators as a result?

Mr Howcroft: It may be that the resources should be allocated in that area. Perhaps having more and better-trained adjudicators would help to address the problem.

Ms Marchese: The whole purpose of the case assistant was to assist in the adjudication process by simply returning calls. It is not really performing in the manner it was established to. In that way again, as Ian said, you have to revisit the issue of the number of adjudicators. If it is simply a clerical job, should you be spending the money on the case assistants or should you in fact be concentrating on better training for claims adjudicators or trainees for the claims adjudication process?

Mr Offer: I am trying to get an understanding and your response is certainly helpful in that regard. One of the things I heard earlier in terms of this question of a value-for-money audit—it is not the first time it has been brought forward—is that maybe it would not be necessary to have any change, that we keep the system without change, let those who are involved in the system now get accustomed to some of the new responsibilities and then potentially, somewhere down the line, within a short of period of time, a year or so, a value-for-money audit be instituted, but only after there has been no change, allowing people to get accustomed to the new responsibility, the new management of the system. As a result, a value-for-money audit might be even more definitive in its final analysis.

I am wondering if you see the need for a value-for-money audit now. I would like to ask almost—if I can sneak in a couple other questions—what do you think it might show? Does the Provincial Auditor not have the authority or the ability to do a value-for-money audit? I snuck in three.

Mr Howcroft: I believe he has the authority. I do not know when or if he has done one recently.

Mr Offer: Do you think that would be a logical and acceptable institution to do this type of audit or are you thinking of somebody else, something outside?

Mr Howcroft: We had envisioned a more independent one than the Provincial Auditor, to do one more in depth than what the Provincial Auditor would do, to look at all aspects, not just the finances but the whole thing, to make sure we are getting value for money.

There has been a lot of change at the Workers' Compensation Board over the last several years and we are not proposing that this change be increased again right now. There should be a time to let the new chair and the new vice-chair deal with the problems that are there and try and get some semblance of order.

However, I think you can start with the process of a value-for-money audit right away. You do not have to say, "We want it in three months so we can implement those changes." You start having tenders come in, you look at the problem, you set a mandate for the independent auditor. They can do the report, which would take quite a while. By the time the report is complete and finalized, your year probably would have gone by. I am not saying the changes should be ready to go in a year, but there should be some time to get a semblance of order there.

1710

Mr Waters: I have asked this before, not today, but it is a question that I like to ask every so often. How often are you people consulted when the board goes to make changes? Are you ever consulted in advance?

Mr Howcroft: I guess it depends on how you define consultation. If you call inviting us in for an information session consultation, we are consulted quite regularly. However, if it is being given the opportunity to have meaningful impact, then I would say we are not consulted all that often. That is a problem at the Workers' Compensation Board and at the Ministry of Labour.

Mr Waters: Okay. Another question I have is decentralization. The board has been going through that. Do you feel that it is a worthwhile thing to decentralize a lot of the functions of the board, or do you think they should stay primarily at 2 Bloor East?

Ms Fiorentino: I find that with a lot of the decentralization comes a lot of inconsistencies from one office to another. Having one employer trying to deal with all these different locations does cause a lot more problems and a lot more time constraint as well.

Mr Waters: One last question—I promise it is the last. The delays, backlogs, inconsistencies in policy and all of those things that you have mentioned—what do you think they are costing your group, the people you represent, in a year?

Ms Fiorentino: From an employer perspective or an employee perspective? I represent not just the employer but a lot of our employees as well in helping them get their claims accepted and expedited.

Mr Waters: Either or both. I would not mind hearing actually, from the employer and the employee perspective.

Ms Fiorentino: From an employee side, there is one employee who has been trying to get a claim adjudicated from last November, and it has taken six months for me even receive that decision. In the interim, we had no status reports whatsoever from the board, so we had no idea where this claim was and why it was taking so long. All of the communication just is not happening.

Mr Waters: In essence, that person has lost wages for that length of time.

Ms Fiorentino: In our case, we continue to pay our employees, but unfortunately this one employee had to make a decision whether he wanted to retire. There was a time limit, and he was hoping to have received this decision before he had to make that decision. Unfortunately, even with my help, we just could not get the decision any quicker. I think most of that was due to a lot of the turnover. I went through three adjudicators and two assistants within that time period, each time starting all over again having them look at the entire claim all over again and on. A lot of it does have to do with the new adjudicators coming in, no experience, and the turnover.

Mr Waters: From the employers side, what do you think the cost is?

Ms Fiorentino: In what sense?

Mr Waters: Well, let's say the Canadian Manufacturers Association. You represent a very large group of people. What do you think it would cost, in dollars, all of the backlog, not only in the human tragedy part, where people are going without money to survive, but what does it cost the other side? There must be a cost there.

Mr Howcroft: Sorry. It is almost impossible to quantify, when you take into account the thousands of people that are lost in just dealing with this enormous bureaucracy up at Yonge and Bloor. You just really cannot put a figure on how much time is lost, etc. There are just too many people dealing with the workers' compensation system to actually quantify it.

Mr Klopp: But it is real?

Mr Howcroft: Very real.

Mr Waters: That was partially what I wanted to try to get out.

The Chair: Thank you for your time this afternoon for your contribution to this hearing process. It is a very limited process, a maximum of 12 hours that can be dedicated to hearing from people, engaging in debate and discussion within the committee and then preparing a report so it is compressed, but your contribution has been a significant one and we thank you for coming, all of us.

Mr Howcroft: Thank you very much. We are glad you could make it on the witness listing.

The Chair: No problem.

Mr Howcroft: Well, almost no problem.

The Chair: This is another case of subpoena envy, I suppose.

COUNCIL OF ONTARIO CONSTRUCTION ASSOCIATIONS

The Chair: The Council of Ontario Construction Associations. Please tell us who you are. We want to hear from you and then have a chance and some opportunity to talk with you about what you have got to say.

Mr Frame: My name is David Frame. I am executive vice-president, Council of Ontario Construction Associations. To my immediate right is Marcelle Priestly, assistant secretary director, Ellis-Don Construction, and a member of the WCB committee. To her immediate right is Carmer Sweica, manager, corporate risk and employee programs, Jackie Brothers, and chairman of our WCB committee. I will ask Mr Sweica to read into the record our submission.

Mr Sweica: The Council of Ontario Construction Associations, or COCA, as it is known, is pleased to have an opportunity to meet with the resources development committee today to share our experience on the issue of services being provided by the Workers' Compensation Board for workers and employers in Ontario.

COCA represents 47 construction, trade and local mixed-trade associations throughout the province. Our industry is Ontario's largest, with a total number of employees over 46,000, generating in excess of 580,000 jobs and \$3 billion annually to the province's economy in 1989.

The council is very active on numerous provincial, legislative and regulatory issues on behalf of construction employers. These include many labour, environment, taxation and legal issues, such as the Construction Lien Act, etc., and the issue of workers' compensation, year in and year out, is the most demanding on both the staff and volunteers of our council.

I might mention that both Marcelle and myself are volunteers in this issue.

The WCB system, as operated in Ontario, is very complex, and both workers and employers regularly need a lot of help, direction and information to be able to guide them through the maze.

We have had an opportunity to review earlier submissions from construction trade unions, Locals 27 and 183. We certainly agree with their general conclusions that service levels in the board are totally unacceptable and the system must become more responsive to the needs of the client groups.

Please do not interpret these concerns to mean that the lack of service raises doubts about the quality of the staff of the board. On the contrary, the personnel are always dedicated and eager to provide quality service and solve our problems. However, for reasons I will talk about shortly, they are hamstrung in being able to do the job they would like to do.

The construction industry has very specific needs in overcoming some of our WCB problems. The industry, both management and labour, has worked very hard to develop systems of safety procedures to reduce and control accidents and thereby reduce the industry's dependence on WCB compensation. As you can see from chart A at the back of your presentation folders, the industry has made substantial improvements to reduce lost-time injuries by

over 45% over the past 20 years. However, we still have some substantial problems.

Lost-time injuries in the construction industry tend to have a persistency of duration almost twice as long as those of other industries, and that is shown on chart B. Our research indicates that our injuries are of a similar rate of severity, but construction's short-term duration of jobs in the industry and lack of light or modified duty positions often block immediate reinstatement. It is our hope that we will soon be able to start to make substantial improvements when the construction reinstatement regulation is implemented, probably later on this summer. This regulation, as developed by labour and management working through the WCB, will establish standards for reinstatement in the construction industry.

However, more work has to be done in terms of being able to accommodate injured workers who cannot return to their pre-accident position. It is our hope that the construction ISU will be given the resources to develop expertise in accommodation of injured construction workers into new employment opportunities.

1720

We strongly believe in the essential reforms as put forward in Bill 162, particularly the vocational rehabilitation requirements which require management, labour and the board to work together to ensure early and timely placement back into the workforce. We are, however, extremely concerned that the board has not been able to meet its obligations on rehabilitation and communication and that, as a result, workers are losing important opportunities and employers are being assessed huge costs via awards on wage-loss provisions of the bill. This cannot continue. Bill 162 will only work if the board operates as a communications co-ordinator with the worker, employer, doctor and vocational rehabilitation. If all of these operate independently, or one does not work at all, the essential elements of Bill 162 will be lost. Workers will lose important opportunities for employment and employers' costs will run out of control.

Construction employers have experienced extremely high increases in WCB costs over the past 10 years. Chart C will indicate that these costs have soared over 300%, despite the significant reduction in accident frequency. Because of the impacts of a higher assessable wage through Bill 162, these costs will continue to climb as most of our members will pay an 18% to 20% increase in costs in 1992. If the board continues to fail to provide proper support to injured workers and properly implement the requirements under Bill 162, the costs will increase even more severely. Our workers deserve better and industry, particularly in economic times like these, simply does not have the resources to continue to pay for a system that costs more and delivers less.

This is an example of legislation or policies being developed only for the board to have significant problems in implementing them properly. We believe the reason for this failure is the significant stress that the whole of the WCB has been under since the implementation of Bill 101 in 1985. In the past six years, the workers' compensation legislation has been substantially overhauled, through Bill

101 and Bill 162, and, perhaps even more important, the WCB operations have been totally restructured so that the organization retains little resemblance to what it was only a few years ago.

These changes include, among others, the 1986 complete realignment of the WCB senior management positions and creation of three vice-president positions; the 1987 complete overhaul of service delivery systems, which included many new management roles at all levels; the 1988 implementation of the new claims adjudication structure through the nine ISUs; the implementation in 1989 of vocational rehabilitation strategies and medical claims adjudication; and the 1990 recreation of seven divisions with seven vice-presidents and the implementation of Bill 162's overhaul of benefits and pension systems.

We are convinced that these overwhelming changes, combined with extensive new automated systems and numerous policy and operational changes, have made it virtually impossible for the board to provide expected levels of service. The implementation of new imaging systems alone has caused incredible upheaval and has given little opportunity for legislative and regulatory changes to be substantially implemented.

It is vital at this time that new management shift gears by slowing down or temporarily stopping development and implementation of comprehensive new policies and procedures so that time and resources may be given to the staff to deal with the current responsibilities and implementation of acceptable service levels. Further legislative, technical or massive personnel changes at the board can only work to further delay the establishment of required service levels. Administrators need this opportunity now and the worse thing we could do is to propose more changes.

The minister has recently appointed Mr Di Santo and Mr King as chairman and vice-chairman. Clearly they must be given a mandate at this time to determine where the problems lie and how they will act to alleviate them. We recommend that this committee, rather than give a long list of recommendations for change, indicate to the board where service levels are inadequate and simply direct them to go out and improve these systems. Certainly this is the best vote of confidence we can give to the new administration. Mr Di Santo and Mr King could also be aided by a thorough technical analysis of the board's practices and systems.

As already recommended by the Employers' Council on Workers' Compensation, we recommend that the government undertake a complete assessment of the board's financial and service operation in the form of a value-for-money audit by the Provincial Auditor. Such a report would be extremely valuable for the board in producing a broad evaluation of its full operation. While other, less extensive audits have been undertaken by the Provincial Auditor on the WCB, none has been commissioned in the last seven years and certainly none has been as extensive as this. The value-for-money audit will "assess components of the management function related to economy, efficiency and procedures to measure effectiveness" through the whole of the operation.

Huge increases in funding have alarmed and shocked employers, while worker discontent with the system has grown. Such an audit will provide the administrators with direction as to how to better provide service while making more effective use of funds. We strongly recommend that the resources development committee fully consider recommending a full value-for-money audit in your report.

Thank you, Mr Chairman and members of the committee, for your consideration of our report. I hope we have some time to pursue in more detail some of the points we have brought up.

Mr Wood: Thank you for your presentation. I see that on page 5 you are critical of Bill 101 and Bill 162, which were put into place over the last five years, especially since 1985. I am just wondering, first of all, if any changes should be made to those particular bills to make them more effective as service to the clients.

Mr Sweica: Actually, we are not criticizing Bill 101 or 162. We are all for them. The thing is the way they have been implemented.

Mr Wood: The previous presenters mentioned the fact that even though a claim is being held up, the employer keeps on paying the wages. What period of time do you think an injured worker should have to go without any money coming in from either the employer or from the WCB? What would be a fair period of time? We hear that some of the claims go on for three months, four months, six months or a year. I know a lot of people go from payday to payday. I am wondering what you think would be fair or if the employer should be paying the wages.

1730

Mr Frame: I think the problem really is related to adjudication of these claims. Surely the answer is not to say the worker can only go X amount of time, because some workers obviously could go longer than others. I don't think any should have to go any extended length of time. But what you should do instead is make sure that adjudication services and systems are there so that they are not held up anywhere near as long as they are right now in some cases. I think that is the key: proper adjudication on the front lines rather than making some sort of artificial determination in these cases.

Mr Sweica: If I may make a comment, Mr Chairman, I know of a large insurance company whose turnaround time on claims is 10 working days. Now, if the board could get to that level, I think everybody would be happy, because that is not out of the question.

Mr Wood: Just as a follow-up as well—and it was part of your presentation—but one of the previous presenters presented a letter saying that the doctors and chiropractors are fed up with the system, that apparently they are not getting their claims paid either, and they are refusing to treat the workers who are being injured. I am sure this is going to have an effect, especially on the construction industry, if a person is off and not being treated. How would you feel about comments like that which are being brought forward at this time?

Mr Sweica: That may have been true in the past, but I understand that the Workers' Compensation Board has changed its procedure of paying doctors now. The doctors are being paid by OHIP and it has nothing to do with workers' compensation. The costs roll through, mind you.

Mr Wood: This is a letter that I saw on 19 March—

Mr Sweica: That is a fairly recent change in the last months.

Mr Wood: Okay, 19 March was the date of the letter, I believe.

Mr Klopp: You said here on page 7 that rather than doing a lot of studies, just make some recommendations and changes. One that seems to have come through a lot has been the assistant adjudicator. Many of the groups have said, either get rid of them or put them on full time. Would you see that as an example of a fair recommendation to give to Mr Di Santo to go on with rather than have him studied to death?

Mr Frame: We have heard this recommendation and certainly should have looked at it. I guess what we are also trying to do is give Mr King and Mr Di Santo the flexibility to go in and look at the organization, take the recommendations they are hearing—take a look at that one, because you are right, it is being mentioned; I have heard it mentioned by two or three other groups—and let them decide for themselves if that would deliver better service, better programs.

Mr Klopp: I think the value-for-money audit, as someone pointed out, is something that you start today but if it is going to be done right it is going to take about a year. That would maybe be one of the things that could give them an opportunity if they want to flex their muscle. I have heard it from so many different groups.

Mr Lessard: You have indicated that the compensation system is very complex for both workers and employers. Has anybody made any recommendations like that, specifically what could be done to make things less complex?

Mr Sweica: I think we have an ongoing dialogue with the board and some of their administrators, and invariably they are meeting once a month or twice a month or something, and these issues are being brought up. I might mention that, as you probably all know, the construction integrated service unit is dedicated to construction, and the only one in Ontario. We have had very good dialogue with that particular unit. We have done some training for some of the adjudicators from the employers' side. Labour has had some education from the workers' side, labour's side. We find that with the turnover, this has to be an ongoing thing, and they are looking at it again, so we are going to be dialoguing with the construction ISU to improve the situation.

Mr Frame: If I could follow up on that question, I guess one of the problems is that every time there are legislative amendments, by their very nature they tend to add more of the system, put more demands on the board. The board responds by developing more systems, more policies, more procedures, which tend to make it more

complex. That is part of the problem; there have been a lot of changes.

Mr Lessard: And that is why you are suggesting we should maybe let things continue. We can audit them, but not introduce any dramatic changes before we give it a chance to see how things turn out with the new chairperson.

Ms Priestly: We are not that discontented with the legislation, the regulations or even the policy, but what disturbs us is that frequently the suggestion is made that, "If it's not working, let's change it," instead of the first, primary question, which ought to be, "If it's not working, how can we make it work?"

We feel that first basic step has been overlooked in the system constantly for the past 10 years and we are saying: "Okay, now is the time. We are absolutely swamped with procedures and we are absolutely swamped with policies. Please don't give us any more. Let's just see if we can make this thing work now."

Mr Lessard: Your own industry has made efforts to develop safety procedures to reduce your dependence on workers' compensation. I know nobody would disagree that that is a worthwhile goal. Is this something you have worked with the compensation board to try and achieve, or is this something you have done independently? If you have done it independently, do you think it is an area where the workers' compensation system could have some role to help you make changes to bring in safer procedures?

Ms Priestly: I think the workers' compensation system has already done that through Workwell.

Mr Frame: I think there are a great number of reasons why the industry has changed. Without a doubt, costs related to WCB combined with experience rating CAD-7, which has been in place for about six years now, have given employers the ability to better control the costs of their accidents. It is the work in part of the board and in part of the construction safety association, employers' groups and unions. There has been a bigger awareness of the costs of accidents: not just the monetary costs but the costs in terms of pain and suffering as well. I think everybody has responded to make the industry safer.

Mr Offer: I think all the previous questions and certainly the responses have addressed the issue in one way or another as to what it is you want or hope this committee might do after we finish our investigation and write our report. What I am hearing is that we should not be, at this point, as concerned with making it eight days, seven days or 11 months or 10 months, although they are all worthy things that we want to work for.

I am sensing from your presentation that what you are saying is that the focus of our report maybe should be a value-for-money audit. Let that take place, let that start to be used to uncover the focuses that will be later on examined to really have a fundamental impact in making the system work the way we all hope it will work. I just wonder if you might want to comment.

Mr Sweica: That is basically what we are saying. In other words, let's sit back from this thing and take a little breather and let's get this thing going properly. Because it seems, as we have mentioned in our dissertation, it is just a

complete change, change, change, change, and you cannot do it. Even in private industry, you cannot do it. You have to sit back and let the thing digest.

Mr Frame: We are not saying all the systems that are there are right, but what we are saying is that the new administrators have to come in and make that evaluation; what is working, what could be made to work better and what maybe is not going to work. Then they can take an opportunity to use tools like a value-for-money audit to make it right.

1740

Mr Jordan: I thank you for your presentation. I see a bit of a contradiction here. "Leave the status quo; leave it alone. Let the new people work at it for a while and see what falls into place." But you also say that we "should indicate to the board where service levels are inadequate and simply direct them to go out and improve these systems." In light of that, the adjudicators throughout the whole discussion here come across as being understaffed, that the assistant is more of a blockage between the adjudicator and the person directly involved when he phones in, and in other cases. So instead of having, for example, 300 adjudicators, perhaps we should have 600, or just using these figures, instead of his having 300 files ahead of him, cut it in half. Let that happen and then do a value study. I do not think you need any study to see that there is an overload of work for the people there.

Mr Sweica: I do not know whether it is the case that more people are going to do the job better. They are all crowded and sitting on top of each other now. How can you put another 300 in some of the areas?

Mr Jordan: Now we are turning and saying it is a space problem.

Mr Sweica: No, I am not saying that.

Ms Priestly: I think what we are saying is that a value-for-money audit will help to determine those things. Perhaps the issue is partly space, or adjudicators' pay, or adjudicators' vacation pay or the level of training they are receiving. I do not think we can step back and guess which one of these things it is. A value-for-money audit is going to help us identify the components of adjudication, be it the quantity area, the case load, assistance, that they need two phones, whatever it is. Let's find out what it is before we start investing a lot of money, guessing what it might be and trying to rectify it.

Mr Hugot: Just briefly, several presenting groups have mentioned the value-for-money audit, and I think Mr Jordan's point is quite valid. Many other groups have mentioned a shortage in staff, the case load and all those other things. When you talk about a value-for-money audit and you look at service to a client, how do you make the connection? In other words, if someone has been waiting a long period of time to get a workmen's compensation claim dealt with, how does this value-for-money audit address that person's problem? Define for me this value-for-money audit phrase. It is sort of a buzzword in this committee because at least four or five groups have brought it forward. But there has to be more to it than that

and I think there needs to be some explanation of value-for-money thing.

Mr Frame: If you would like, I could supply the committee with more information about a value-for-money audit. Very briefly, we quoted a sentence from the description of the auditor explaining a value-for-money audit. I quoted near the bottom of page 8 where it is described "assess components of the management function related to economy, efficiency and procedures to measure effectiveness." Where that relates to your problem of how come is taking for ever for somebody to get service at the board the problem is that the board is a very big bureaucracy, there are thousands of employees there, most of whom to provide service.

If you look at the systems the board has in place, the persons it has in place, in theory it should have the personnel and the systems to provide a fairly high level of service. Obviously we know they are not. So we are saying there are obviously systems problems and maybe one of those systems problems is that they have only 300 people in the front-line adjudication when they should have 500, for instance, that they do not need those other 200 people somewhere else and they should be moved, or they should reallocate resources.

What we are saying is that rather than throw more resources where it appears they need more resources, let's take a look at the whole body, at the whole workings of the board and find out where it is not working and reallocate those resources or ask the audit to suggest where resources should be reallocated to make it work.

Mr Hugot: Would I be correct in assuming that you are looking, really, at a productivity-efficiency sort of situation as being the main thrust of that?

Mr Frame: Sure. By efficiency and productivity you are not necessarily saying this employee is inefficient. You are saying they are not given the proper systems to be efficient, perhaps, or perhaps they are not given the proper information or whatever to be able to do their jobs. It is an investigation of all of that.

Mr Sweica: I might mention that in industry we call it bang for your buck, and that is the same thing.

Mr Hugot: The industry I came out of called it bang for a buck too. When I refer to productivity and efficiency, I, of course, do not necessarily get hung up on a person's day-to-day duties, but I would think workplace structures and management structures and all the rest of those things have some kind of place in that equation, so it is not just a simple employee productivity issue. But I have a sense that this value-for-money audit refers much more to the productivity-efficiency issues than anything else.

Mr Wood: Prior to 6 September I worked in industry for almost 29 years, and I did manage to get hurt one time. It ruined my record. Once out of the 28 years, and I was off for about five or six weeks. I was always under the impression, until I got involved in this and involved in the union, that if a person gets hurt in the mill, he goes to the doctor or is taken to the hospital, and the bills are paid and he goes on compensation until such time as the doctor says he can go back to work.

I just want to know if you have figures as to what percentage you would feel are legitimate claims and what you would consider to be people coming into work in the morning and claiming that they actually hurt themselves on the job but it happened the day before. Do you have a figure on the percentage of those figures?

Mr Sweica: I do not think I could quantify that. No, it is just a guess.

Mr Frame: I do not think there is any realistic way to produce those numbers.

Mr Wood: I am doing it myself, I am phoning up the board and they are saying, "I have 200 or 250 claims on my desk." I say: "I only want you to look at one. Put the other ones aside and look at that particular one." I find it hard to believe there is that much fraud or accusation of fraud that the workers are not getting their money. Like I said before, as far as I am concerned, you get hurt, you go to see the doctor and the doctor sends you back to work, and you get paid in the meantime.

Ms Priestly: There is very little incidence of fraud. I usually work in industry and I deal with thousands of

claims, and there is very little fraud. I would have to say that 99.9% of the claims are genuine. These days the issues are much more complicated. The issue is not whether or not you are genuinely sick or disabled; the issue is, is it compensable? Is it work-related? And so questions of fraud do not even enter into the equation.

Mr Wood: But the doctor or the specialist really is the one who should be making that decision, along with recommending to the adjudicator.

Ms Priestly: Certainly, and doctors have basically had very little input into the system so far. Maybe that is something a value-for-money audit will point out.

The Chair: Thank you very much. Thank you, Mr Wood. Thank you to the Council of Ontario Construction Associations for coming this afternoon, for sharing your thoughts with us. You have played an important role in the exercise that we are involved in, and we are all appreciative of that.

This meeting is adjourned.

The committee adjourned at 1749.

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Wednesday 12 June 1991

Standing committee on
Resources development

Workers' Compensation Board
Organization



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de l'Ontario

Première session, 35^e législature

Journal des débats (Hansard)

Le mercredi 12 juin 1991

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développement des ressources

Commission des accidents
du travail
Organisation

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 12 June 1991

The committee met at 1546 in committee room 1.

WORKERS' COMPENSATION BOARD

Resuming consideration of the designated matter, pursuant to standing order 123 relating to the Workers' Compensation Board.

CANADIAN ASSOCIATION OF REHABILITATION PERSONNEL

The Vice-Chair: I would like to call the committee to order. I guess we are starting off a bit late, so we will move right into it. The first group is the Canadian Association of Rehabilitation Personnel. Would you please identify yourself for Hansard?

Ms Scott: I am Viki Scott.

Ms Baptiste: I am Barbara Baptiste. I am the president of the Canadian Association of Rehabilitation Personnel.

The Vice-Chair: The tradition has been so far that you try to have a short presentation, try to keep it as brief as possible, and then we move into questions and answers at least allow time at the end for questions and answers if possible. The floor is yours.

Ms Baptiste: Okay, I will start. You have asked us to address efficiency of service in the Workers' Compensation Board. Specifically we will be addressing rehabilitation.

Ms Scott and I wish to congratulate you for allowing to participate, as this is the first time in 21 years that our organization has been asked to be involved in the legislative process.

I will briefly review what CARP is, what accreditation and certification are, the definition of rehabilitation, and the purpose of vocational rehabilitation as a health and social service program and as a service delivery mechanism.

What CARP is not is the Canadian Association of Retired persons. That is the other acronym, so we may be changing our acronym. When I saw the headline that CARP members got lower prescription rates, I was pretty excited, but that is not what we are. We are the Canadian Association of Rehabilitation Personnel. It is a 21-year-old, non-profit, federally chartered organization, initially organized by vocational rehabilitation specialists working with the industrially injured. It now encompasses professionals who work with the congenitally, acquired and traumatically disabled.

The board is a volunteer board and consists of national and provincial boards. Ontario is approximately 50% of the membership of the national board.

Over the past few years there has been decreased involvement of the rehabilitation personnel at the Workers' Compensation Board in CARP. This began with the new hiring of rehabilitation personnel over the past two to three years. These new rehabilitation case workers do not meet the experiential or educational requirements of accredited rehabilitation workers and most certainly do not meet the

requirements of certified rehabilitation counsellors. This is a major concern of our association.

I will explain to you what accreditation is and what certification is. Accreditation is offered to all CARP members who meet the educational and experiential criteria set by the national association. This is all gone into in more depth in our brief; this is just a review. Certification is more involved and includes examination and a code and canon of ethics for working with persons with disabilities and injuries. I have included, as an exhibit, the code and canon of ethics. It invokes greater consumer protection and accountability by the professionals. Certification was implemented in Canada in September 1990 and the first exam was written in April 1991. Of the many hundreds of rehabilitation personnel at the board, I believe one Workers' Compensation Board worker wrote the exam in Toronto.

Vocational rehabilitation is an integral part of the health care team. Masters' degrees are offered in vocational rehabilitation in the United States and more and more books are solely dedicated to this profession. Vocational rehabilitation counsellors have substantial impact on the cost-containment portion of an insurance policy, as well as substantial impact on the future direction of the life and work of persons with disabilities and injuries. Returning an injured worker to his pre-injury status of work is intrinsic to the rehabilitation service of the Workers' Compensation Board, and this is the process of vocational rehabilitation.

For a system to be efficient it must also be effective. Effectiveness is ensured by the quality of personnel. We recommend that all rehabilitation workers within the WCB be able to meet the requirements of accreditation and that all vocational rehabilitation counsellors meet the requirements of certification.

I should give a definition of rehabilitation. I think it is important. It is on page 6, but I will just refer to it to give Viki some framework.

Rehabilitation—and this is looking at the much larger picture than vocational rehabilitation—is a facilitative process enabling a person with a limitation to attain usefulness and satisfaction in life. Rehabilitation, then, equalizes opportunity for life attainments as a human right and societal obligation. Rehabilitation is more than medical and vocational. The mandate of rehabilitation is to attain usefulness and satisfaction in life.

It is the largest component part of insurance systems within the US as well as the workers' compensation boards within the US systems. The Canadian system is so far behind within the Workers' Compensation Board that it is quite embarrassing even to deal with our counterparts in the US. We are asking for a lot of changes here.

Ms Scott: Basically what I am going to go through for the next few minutes is what vocational rehabilitation programs were provided prior to Bill 162 and what vocational

rehabilitation programs are being provided post-Bill 162 under the present Ontario Workers' Compensation Board system.

In the voc rehab division manual of November 1982, the following definition of rehabilitation was offered: "A very acceptable but sweeping definition of rehabilitation in the broad sense is that it is the cultivation, restoration and conservation of human resources, assisting those who are handicapped by disease, disability or social maladjustment to achieve a state of maximum well-being."

The goal of rehab for the board, before the new strategy was developed, was to provide the injured workers with the means and opportunities to achieve the most effective restoration of earning capacity and assume their place back in their own community. It did not mean just vocationally, but meant socially, on the family level, economically etc. It was a more comprehensive process than it is today.

To implement this goal, the board set out to "develop and promote understanding and the active participation of industry, unions, treatment agencies, medical profession, government agencies and ministries, community groups and the public at large in the vocational rehabilitation process." At one time the board would go out into the community and have employer fairs, where it would pull all kinds of employers together and the case workers would go and market their injured workers. A lot of employment was gained through those types of employment fairs.

To maintain a progressive and responsive vocational rehabilitation service, as their 1982 rehab manual stated then, is to "undertake the responsibility of helping the industrially injured worker to help herself/himself toward the restoration of renewed confidence, independence and the achievement of self-realization." Again, it used to be a very personal, individualized program that was developed in the old days, as we put it, at the board.

It is clearly evident that there is some recognition by the board that the injured workers were affected by their surroundings. Thus, the perceived need to assist the injured worker adjust to the injury and the need to enlist the co-operation of the community in the process. Anyone knows that to successfully place or integrate someone back into the community you have to have the community support and the mechanism there. It can never be separated, but under Bill 162 it seems that there is the community and there is the injured worker and never do they come together at any given time.

This brief review clearly indicates that the WCB understood the needs of injured workers with respect to rehabilitation—medical, social and vocational. Unfortunately the implementation of these goals falls immensely short today. Over the years injured workers and their representatives have too often told the WCB that too many injured workers are abandoned with little or no service from the voc rehab division. It seemed that any time anything of any contention seemed to occur through the history of the Workers' Compensation Board, the voc rehab services were the scapegoat. In essence it appeared to be a lot of our rehabilitationists who were under the gun or the attack.

From a lot of pressure through the years, in 1986 the then Honourable Bill Wrye appointed the Minna-Majesky

task force to study voc rehab services. The Minna-Majesky task force report ended up being, as everyone knows, entitled *An Injury to One Is an Injury to All*. That was announced in August 1987. There were 84 recommendations to the Minister of Labour on how the voc rehab services of WCB could be improved. Among these recommendations the three points were:

"1. Rehabilitation as a right to injured workers who have not returned to work within 30 days of their accident."

"2. Mandatory rehiring."

"3. The establishment of a separate vocational rehabilitation division with its own vice-president, and renaming the board the Workers' Compensation and Rehabilitation Board."

It is evident from what has transpired since Bill 162 came into effect that the services to injured workers from the WCB with respect to voc rehab are very restricted. The focus now is on getting the worker back to the accident employer and doing so at the least cost possible. For that reason we see many injured workers being denied services because the board has, in its wisdom, deemed them to be non-rehabilitative and therefore they cannot be considered to be worth the effort to be provided with this service. It is very crass but very true.

The implementation of the new voc rehab strategy, along with the changes in the board's policies for subsection 45(5) in November 1987, the adoption of integrated services and the more restricted access to rehab services clearly indicate that the board has gone overboard in its effort to save money. It is very difficult to work on rehabilitative programs when there is no team effort there. When you have two or three rehab case workers assigned to a unit where before there would be one general division which would employ over 100, you are not getting a comprehensive rehab services process that an injured worker should have, because in some integrated service units you have three greenhorns, you might have a combination of greenhorns and experienced, or you may have an ISU that has all experienced people. So you are not having consistent rehab provided by the board in this province today.

1600

Sections 54a and 54b of the Workers' Compensation Act, as amended under Bill 162, remove from the board the following power: "To aid in getting injured workers back to work and to assist in lessening or removing a handicap resulting from their injuries, the board may take such measures and make such expenditures as it may deem necessary or expedient."

The act and the policies of the board establish windows of opportunity as to when voc rehab services will be provided, and if such services will in fact be provided. It is a generally mandatory that someone have rights to rehabilitative services today, even at the worker's request.

To receive voc rehab services and supplementary benefits, the board has to be satisfied that a voc rehab program will help increase the worker's earning capacity to such an extent that the sum of the worker's earning capacity after voc rehab and the amount awarded for permanent partial disability approximates the worker's average or net average earnings, as the case may be, before the worker's injury.

the criterion is not met, the injured worker is provided with a supplementary benefit which is equal to the federal old age security pension. This supplement is called wage loss, permanent supplement and older workers' supplement. Part and parcel of this is the integration of CPP and CP benefits in the calculation of supplementary benefits. This is not rehabilitation at all.

To establish the vocational needs of an injured worker, a rehab case worker has the option to utilize limited testing tools. Some of those tools are dated. They do not recognize new technology that is coming forward daily. As Erbara said earlier, we are behind our American counterparts in research and policy development in workers' compensation. When we have the Americanization coming forward to our country private rehabilitationists are utilizing these new tools and techniques in order to assist an injured disabled person to fit back into the community; unfortunately the board is not. It basically states very clearly in its policies which testing tools case workers are allowed to use, and in order to have those testing tools changed, you have to have a policy change. By the time the policy is changed, there are new tools available on the market.

CARP strongly recommends that the independent firms at the board contracts testing out to have accredited, certified rehabilitationists within their employ. Professional standards are required to provide rehabilitation to impaired disabled citizens of Ontario. This would include certification of all professionals providing case management and vocational rehabilitation, specifically certified rehabilitation counsellors.

I am going to talk a little bit about the functional abilities evaluation or, as everybody understands the term, the FAE. Functional abilities evaluations are a common tool of a rehabilitationist and a major tool in preparing a program plan or direction for an injured worker or a disabled citizen in the insurance industry, the private industry or the industrial industry. What makes CARP very nervous about the FAE process is that the board "may" provide an FAE. Again, there is no guarantee that an individual will have a functional ability evaluation conducted.

The board's FAE involves a range of assessment procedures to identify an individual's functional abilities and limitations as they relate to work. Assessments are classified as either specific or general. We agree with the definition the board uses of functional abilities and limitations as they relate to work, but unfortunately an injured worker does not have a statutory right to this assessment. In practice, the board is only interested in obtaining a list of a person's restrictions. The board's FAE concentrates on one's restrictions; it does not present one's abilities clearly. A case worker is not provided with the information required to assist an employer in returning an individual to work.

A definition of a worker's abilities provides criteria to allow an employer to accommodate the worker. The structure of the board's FAEs today presents a design of criteria or elimination from a voc rehab program. Functional abilities evaluations are intended to be assistive; that was the entire reason for their creation.

Inappropriate job placement can result in employee frustration, lower productivity, higher production costs and

a greater potential for reinjury and injury of co-workers. An accurate functional abilities evaluation would provide objective evaluations of workers' traits, aptitudes, functional capacities and skill sets. An effective FAE would provide an employer with specific information to assist in the accommodation process. We all know that under the act today, accommodation by the employer is mandatory, and the employer needs assistance in that process. Functional abilities evaluations as interpreted by the WCB must be reformed to the level of general consistency and recognition of certified rehabilitationists.

Under the Ontario task force on the vocational rehab services of the WCB in relation to CARP, we recognize that rehabilitationists were under attack during the process, specifically those who were employed by the Ontario WCB. CARP agrees with the findings of the task force in principle. The recommendations referring to case management, rehabilitation service providers, qualifications of counsellors, case loads and employment specialists are all supported by CARP.

We strongly suggest to the committee that it obtain a copy of this report and review it thoroughly. CARP would be interested in providing resources to the board to allow and assist in the implementation of the task force recommendations.

CARP is indebted to the dedicated rehabilitationists who were employed by the WCB 20 years ago. The association was initiated by these pioneers of industrial vocational rehabilitation. A few of them are still part of us. When you talk to them about the past and what they are faced with in the future, they are disillusioned and a lot of them have left the board to work in another area of rehabilitation, which is a major loss to the board itself. These individuals had the foresight that our profession needed to be recognized, united, educated and standardized.

In the past, the WCB supported its employees in these efforts by providing financial, physical and moral assistance. The Ontario WCB supports CARP as a professionally recognized organization by placing a clause in the labour contract with its employees which provides CARP membership dues payment as a benefit. As recently as 1988, a voc rehab counsellor who was employed at the board had to meet the basic requirement for employment by being "willing to proceed to accredited status" with CARP. For your benefit we have enclosed exhibit II, which is a copy of a rehab counsellor's job spec from 1988.

CARP was excited to learn that the WCB was going to employ many more rehab case workers as recommended by the Ontario task force. This excitement soon was deflated when we learned that the case workers were not going to be as qualified as our rehabilitation counsellors were. We further learned that the rehab counsellors had been declared redundant and the union was being forced to launch class-action grievances. A posting for a WCB case worker as it appeared in the *Globe and Mail* of 20 November 1989 is enclosed for your benefit as exhibit III.

As mentioned earlier, CARP Ontario has well over 500 members and represents 50% of the national association's population. Last year, 20% of the Ontario membership represented the Ontario WCB. Even though there has been an increased staff in the rehab department at the board, our

membership representing the Ontario WCB has dropped to less than 10% this year. Why? The answer is very simple. The new employees do not meet our academic or practicum criteria in order to become members or accredited, and certainly do not meet the criteria to become certified.

A baseline to ensure efficient and effective services to the injured and disabled citizens of Ontario is having qualified professionals to work with them.

In conclusion, CARP Ontario does not endorse the WCB rehab strategy as it is being administered today. We endorse the WCB inclusion of specific rehab services that are recognized by the courts, benefit plans and insurance carriers for injuries and disabilities which are other than industrial and which are presently excluded. Third, we do not endorse the lack of training provided to today's WCB rehab case workers.

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We have listed 19 recommendations:

We recommend that CARP be represented on the Ontario WCB—

The Vice-Chair: Excuse me. We are running over. Due to time constraints, if the members of the committee wish to read those over, they can pose some of their questions out of those.

Mr Ramsay: Thank you for your very concise presentation. I was curious about your mentioning a couple of times how the Americans seem to be so much more advanced than we are in rehabilitation diagnostics and processes. There may be some very good reasons, maybe given their military history, why they are ahead and that sort of thing. But why are we not adapting the research that has been done and that is available out there? Why are we not purchasing or certainly borrowing this expertise?

Ms Scott: Private industry and the insurance industry, here in the province or nationally, do so. A private rehabilitationist practising in Ontario—and we do have people who have private practices that assist the legal clientele of this province—does purchase those services and does obtain the resources and research available through our US counterparts. It is the same as some of our hospitals within the Ministry of Health and facilities within the Ministry of Community and Social Services. They are always searching for better resources and programs.

In vocational rehab or industrial rehab, which are basically controlled by the Workers' Compensation Board today, they do not do so, for reasons we do not know. It is available to them. We have offered our assistance, and even the people who are employed at the board are aware of the services that are provided. I think it just comes down to it having to be a policy decision, and that again becomes a legislative process.

Mr Ramsay: So would you say, really, that rehabilitation is still not a serious priority of the WCB?

Ms Scott: I do not think it ever has been taken seriously.

Mr Arnott: Ms Baptiste and Ms Scott, thank you very much for your presentation. We appreciate your input.

You mentioned that your association has 500 members in the province of Ontario, is that correct? How many people are there presently engaged in the practice of vocational

rehabilitation of some sort, whether it be with Comsoc or the Workers' Compensation Board or so on?

Ms Baptiste: The membership is not divided into occupational groups that way, but the majority of them are vocational rehabilitation. Because of privacy issues—that kind of thing, we have not divided it that way. We are now putting out to the membership that we would like to do that and are getting their authorization relative to obtaining more information other than what they go through for accreditation process, where they do have to give details.

Mr Arnott: Perhaps my question was not clear. I was wondering how many jobs there are, how many people there are who are not members of your association.

Ms Baptiste: That is hard to number, but I would say that in terms of people who practise rehab or are in the field of rehab and are employed in that, you are probably looking at a couple of thousand.

Mr Arnott: Presumably some of those people do meet your accreditation or certification criteria.

Ms Baptiste: Yes and no. A lot of them would, but some of them are certified already. For example, certified occupational therapists have their own association, though some of them may double over and join ours. Certified social workers have their own. Certified psychologists who are also licensed, have their own but will also be members. Physicians have their own groups but will also be members. So there is a lot of overlap and some of them prefer to belong to their very specialized group, rather than the overall rehabilitation group, which is a process as defined in here.

Mr Arnott: As to your recommendation that your organization be recognized as the formal authority for workers' compensation vocational rehab counsellors, how would that affect some of the other organizations that are presently—

Ms Baptiste: I think it would set a precedent as well for Comsoc, you are right, for its vocational rehab department could start moving forward from there. Our concern is that Comsoc has stricter hiring requirements. Our concern is with the hiring requirements of the board and complaints that we have received directly. That is the problem. So the WCB system has begun not to be taken seriously by employers and citizens of Ontario. I think you need to be aware of that.

Mr Arnott: Should the board adopt recommendation "That CARP's accreditation process be recognized as a qualification for employment at the Workers' Compensation Board, and that certification be required for vocational rehabilitation counsellors," are there enough people there to meet your accreditation standards?

Ms Baptiste: Oh, yes.

Ms Scott: For the case workers, no. The case workers do not meet the criteria.

Ms Baptiste: The WCB case workers.

Ms Scott: Yes, the WCB case workers do not meet the present criteria for accreditation with our organization, used to be that before they could be employed at the board they had to meet accreditation. They changed that.

Mr Arnott: Presumably some do not, but some must.

Ms Scott: Some probably would. We just have to encourage them to apply. It is not encouraged any longer.

Mr O'Connor: I want to thank you for coming and speaking to us today. Clearly, as somebody speaking for workers who are seeking rehabilitation and making sure there is fairness in the system, you should not have been excluded out of the system for so many years; 20 years is ridiculous.

I think everyone in this room would agree that the right of employment is something we all share in common, and when a worker is injured, that same worker has the right for rehabilitation so the person can get back to work whenever possible.

Right now it seems there is an awful lot of delay at the board. Of course, as members we have a lot of these people coming to our constituency offices, sharing their concerns and their frustrations and trying to get through a little bit quicker. Do you feel there have been changes within the board where, in trying to strike a balance maybe in the books as to what the money should be spent on, it is trying to balance the system at the cost of the injured worker by giving a person who is not accredited through your criteria, which case then the case worker handling that person's case is not necessarily performing the task that is most necessary for that injured worker?

Ms Scott: I agree. I think one of the principles the board is going to have to adopt in order to make rehabilitative services succeed in this province is to remove rehab services from the adjudicative process, where it is time-limited and they have to meet criteria, etc. One person's broken back and return-to-work plan is much different from another person's broken back and return-to-work plan. They could be totally different economically, financially, socially, etc. Unfortunately, the board has a limit for certain back diagnoses to return to work, so it becomes purely an adjudication process. Six months and the dinger goes off. You might be able to negotiate some extension. That is no way to develop a rehab program, through negotiation and adjudication. That is not a rehab plan at all.

Working with employer groups on return-to-work processes in my employment, the employers have always shown a willingness to return workers to work. They just want to know how. They are concerned with the cost factor, which is understandable for an employer. They always are for any type of component, not just for an injured worker but for productivity costs, etc. If they are shown properly and they are assisted in a more positive process, then I am sure the employers are co-operative in returning people to work. If they can be shown a business plan, that in order to get this person back to work this is what we have to do—because that employer is responsible for that injured worker till death anyway, he would be amenable to spend the money, because he sees the person as an investment. They have invested a lot of money previously, and they are going to anyway, even if he is no longer employed by them. So employers just need some assistance. That, generally, is what they would say to me at a work site: "How do we do this? Please help us. How can we get them back as soon as

possible without risk of another injury or risk to another worker?" That was always the question; it was never the question of cost.

1620

Mr Arnott: Referring again to recommendation 4—and I will read it again for the benefit of those listening, "That CARP's accreditation process be recognized as as qualification for employment at the Workers' Compensation Board, and that certification be required for vocational rehabilitational counsellors"—are there any other workers' compensation boards in Canada, in any other jurisdiction, that presently do this?

Ms Scott: All WCB boards in other provinces recognize CARP as an accredited body of rehabilitationists to the point where we have corporate memberships. Confederation Life Insurance Co can become a corporate member of CARP, stating very clearly that it does recognize CARP as an accreditation process for the rehabilitationists it employs. It provides credibility to that organization. Alberta is a corporate sponsor. Alberta's Workers' Compensation Board is a corporate sponsor. Newfoundland is a corporate sponsor through the national body.

Mr Arnott: Applicants for jobs as vocational rehabilitation counsellors within those boards are denied jobs if they are not accredited with you. Is that correct?

Ms Baptiste: As long as they meet the requirements for accreditation.

Ms Scott: It is interesting that the majority of persons on our national board—I sit on the national board—are basically from workers' compensation boards nationally.

Mr Wood: Just briefly, I see on page 11 of your presentation that you have three points. They are that rehabilitation should start within 30 days of an accident, mandatory rehiring and the establishment of a separate vocational rehabilitation division. I am just curious. Is this going to help considerably with recommendations of this kind being put into effect?

Ms Scott: Would it be effective rehab if it was separated?

Mr Wood: Yes.

Ms Scott: I believe it would be, because it would be removed from an adjudicative process then, the claims being recognized by the board as basically bona fide under the act. Let's take them from the board's adjudicative process and let's send them to a rehab division of some sort, preferably independent of the board, and let's allow rehabilitative processes to be conducted.

Mr Wood: And a timetable as well?

Ms Scott: On a timetable? Yes, it can be timetabled.

Mr O'Connor: Given the need to get rehabilitation started as quickly as possible, do you think it is possible to set a timetable or guidelines on that or do you think we should still allow that to go through the adjudication process?

Ms Scott: Rehab starts from the day of injury. When you walk into that doctor's office, that is when rehab starts. A lot of our private practitioners work within the medical component, where they will work on a team with

physicians, occupational therapists, physiotherapists and speech therapists. They will model the case with goals and objectives for the individual. Rehab starts on day one. Once the medical is maximized, then we can look at other objectives in order to successfully place somebody back into the community. We have to do realistic goal-setting. Some of our injured persons cannot work again, but we should be able to rehabilitate them to a point where they are happy with their present existence.

Mr O'Connor: Do you feel that in going through the rehabilitation process there is a risk, perhaps, of an injured worker being returned to work too quickly?

Ms Scott: Yes.

Mr O'Connor: Do you feel that is happening today?

Ms Baptiste: Yes, and there is a lot of documentation on that, especially with repetitive strain injuries. The decisions are laden with a lot of medical and legal and ethical implications, and these are not being taken into account. That is why you have so many injured workers complaining. They have reason to.

The Vice-Chair: We are way over our time. I am sorry. I thank you both for your insight into your dealings with the board. You will be one of the first groups of people to get a copy of our final report when it is up and about.

Ms Scott: That would be appreciated. We want to make all of you aware that if there is any assistance that you require in developing any recommendations around the rehabilitative process, the organization is more than willing to assist. Just let us know.

The Vice-Chair: Good. Thank you again.

I have a request for the members of the committee, that we flip the next two individuals. Is there any problem?

Interjections.

The Vice-Chair: I do not know. They are both a bit large to flip physically, so I think we will just flip the order in which they appear.

ODOARDO DI SANTO

The Vice-Chair: Odoardo Di Santo, thank you for coming before us today. You are becoming quite a familiar face in the room as it is, so I think I will just turn the floor over to you and let you begin with your presentation.

Mr Di Santo: Thank you very much. It is not the first time that I have been flipped anyway.

I am very pleased to be here today to discuss with you the issue of service delivery at the Workers' Compensation Board. I have been the chair of the board for 41 days and it goes without saying that I do not yet have all the answers to the important questions and the issues that have been raised before you. However, I appreciate the opportunity to discuss some of these concerns in a general way and to take some questions from you after my presentation.

Workers, employers and various associations that have appeared here in recent weeks have raised a number of key issues regarding the range and general quality of board services. Most of these points have to do with what impedes service and how the board can improve it. They focus on three areas where there has been a great deal of

change: in the area of equipment—that is, the new technology introduced to help the staff to do their jobs; in the area of new legislation and policies, and in the area of staffing.

In the area of technology, you have heard many concerns expressed about telephone answering machines at the new imaging system at the board. I agree with these concerns. The purpose of new technology should always be to help you to do your job more effectively. That was certainly the intention of those who introduced this new technology, but it is clear that technology cannot be used as a quick fix for more fundamental problems. Technology should serve people, rather than the other way around. My impression is that the benefits of the new technology at the board can be preserved if we use it appropriately and if we use it as a tool and not as a solution.

I must say that at this stage, probably because the new technology introduced is very complicated and very advanced, there has been a long period where the people who have been using the technology have been trained. Now they are starting to use the technology with more confidence and hopefully it will bear some fruit.

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On the legislation front, there are concerns about too many legal and policy changes that distance the board from its clients and create communication barriers. While I caution that all progress involves change, but all change is not necessarily progress, I think we can say it must be appreciated that workers' compensation issues go right to the heart of many of our most important social, political and economic concerns. It is a very dynamic world we live in. We must respond to increasingly complex and difficult realities. Some issues simply cannot be simplified. I can promise, however, that each new policy change will go through a rigorous internal justification process before it is proposed. I can also promise that our new public consultation process will be given every support my office can give and that we will take all necessary steps to ensure that our communications are clear and understandable.

In the area of staffing, we have heard that board staff are often difficult to contact, slow to make decisions and unaware of the board's own policies and procedures for carrying case loads that are too heavy. Once again, I agree with these concerns, but in my opinion the board's front-line staff are doing a fantastic job in coping with an overwhelming situation. I have been privately touring the board regularly as well as consulting with front-line staff in small groups. They understand the problems as well as any of the presenters and have given us concrete advice on how to address them. I am very impressed with their dedication and their feelings of frustration at not being able to deliver the very highest quality of service and their willingness to co-operate in any plan to improve service. This will be our most important resource in the weeks and months to come.

I have a personal theory about the true nature of the service delivery problems, which I will share with you. If you look at the board's own statistics, less than 1% of the claims submitted are denied on the grounds that they are related to the claimant's work, yet they seem to have been a very complex, expensive, cumbersome and frustrating

judication process to filter out that tiny portion of claimants. I believe virtually everyone in Ontario shares these values: the dignity of work, pride in our personal honesty and an aversion to taking something for nothing. Yet, sometimes one has the impression that what we do at the board carries with it an implicit assumption that claimants themselves do not have these values. I think this is an accident of history. No one is really to blame, but I believe deeply that many of our service problems would disappear if board processes truly reflected the personal values of the people of Ontario.

To start with, I want to build a board that has a human face and is respected for the important services it provides and its sensitivity to client needs. To achieve this, we plan to place service delivery above all other goals. We know we cannot possibly please everyone, but we can address the legitimate concerns of workers and employers with compassion and efficient management. Employers have justifiable complaints, especially regarding assessment premiums. The development of a revenue approach with extensive employer input is a clear signal that the board is becoming more sensitive to its client needs. But you will not be surprised if I say that this goal of better service will not be achieved overnight. We obviously need time to transform the Workers' Compensation Board into the responsive public agency we all want it to be. As client service improves, the board hopes to enhance the growing partnership between employers and workers and between labour and management. To me, this partnership between labour and management is very important and economically sound. In the years ahead the survival of Ontario's economy will depend in large part on the degree of partnership between the major players.

Rehabilitation of injured workers is an important element of this partnership. In Europe and elsewhere in the world, co-operative methods are used to rehabilitate the injured workers, and we will be carefully looking into how we can improve our rehabilitation services over the coming months. Working together to rehabilitate and reintegrate injured workers into the economy makes sound financial sense. This has been proven already in many countries.

But more important, it is simply a matter of justice. Compensation for workplace injuries involves more than paying benefits. It is also a matter of restoring dignity, a sense of self-worth and an opportunity once again to contribute to and share equitably in our collective wealth as a society.

The Workers' Compensation Board is a key element in the economic, medical and community life of this province. Workers turn to us in their time of need. Employers rely on us to make the best use of their contributions. Government looks to us as a major component of public policy. This is a great responsibility for us at the board. We are looking forward to the challenge of improving the board's service, making the board more responsive to its clients and giving the system a more human approach.

The next three years will be challenging, exciting and filled with opportunity. We must consolidate the changes of the past so that we can face the future with renewed

confidence and meet all our challenges in ways that are personally satisfying and fulfilling.

I want to thank you for giving me the opportunity to learn your views and share with you my own personal visions of the workers' compensation system. I look forward to the report of your committee. In turn, I would like to invite all committee members to visit the board and see our operation at first hand. Now I will be happy to answer your questions.

Mr Ramsay: First of all, congratulations on your appointment, Mr Chair. You obviously have a challenging task ahead of you, as you know; you have been a worker adviser. We all wish you well in your task.

What has really struck me in the presentations we have heard in the last few weeks is the consistency in the complaints that come in, whether from employer groups or people representing injured workers. In many of the things you have listed, there seems to be an overriding consistency resulting from much of the change that has happened to the board in the last five years. Seeing it all together, I have great sympathy for the people at the board who have tried to wrestle with all this change. You spoke in your presentation of the time you had started to talk to and consult with front-line workers. Are they saying the same things we have heard in these presentations in these last few weeks?

Mr Di Santo: As I said in my presentation, the front-line work has been part of the internal reorganization that has taken place in the last five years. As such, they feel they were delivering a certain type of service before. Many of them find a new structure does not allow them to do what they used to do and think that it is not totally satisfactory. Of course, they are the people who hear from the clients, both the employers and the workers, because they are at the telephones and have to route the complaints of the workers. They are really the front-line people. They are mostly affected by the pressure that comes from the workers and in that respect they are very much aware of the problems. They are the first ones who want to see the situation get better so they can do their job better and they can satisfy our clients, both the employers and the workers.

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Mr Ramsay: As you used to be a member of the provincial Parliament, you know that depending on the area of Ontario you represent, we have very big case loads of injured workers we represent to the WCB. Mostly it is my staff I must give credit to in Kirkland Lake and Haileybury offices in my riding. They work very hard with people who have back injuries trying to get them a decent pension. I know it is a little easier to assess, but I noticed that one day somebody would just come in and say, "Gee, I'm starting to lose my hearing." My staff would start to question them and they would say, "Five years ago I retired as an equipment operator." They would take down some information and four weeks later the person would get a cheque for \$15,000.

I would sort of marvel at that and wonder about it. Maybe it is deserved; maybe it is not. Where that is sort of an easy thing to assess very quickly an award can be made in a hearing-loss case, and yet we struggle year after year

trying to get people with—I know back injuries are difficult, but you can really see they are in pain and they really cannot work. I just hope you can streamline some of this to alleviate some of the suffering that is there and the cost of doing all of this.

Mr Di Santo: As you know, we are governed now by Bill 162, so the new cases will be treated in a different way from the accidents that happened before January 1990. Certainly, as I mentioned in my presentation, there are two aspects to the case that you are talking about. For the cases that happened before 1990, I think we have a major problem. One problem is the pension and the level of the pension, and we can discuss whether it is adequate or not. The second problem is that a number of those people with back injuries become unemployable for all intents and purposes. Because of that, when they are assessed for pension, if they qualify they will receive the old age supplement and basically their income shrinks to a level where it is not comparable to the pre-accident income.

Those are the people who are negatively affected by the results of the accident. Now, I think—this is my personal conviction—nobody should be punished or penalized because of an accident. Those people are penalized because our society does not give them any right to gain employment after an accident. They have access to employment only if a willing employer hires them back, but the employer has no obligation at all.

I mentioned in my presentation all the jurisdictions in western Europe. In western Germany in 1919, 72 years ago, mechanisms were introduced so that society took charge of the responsibility of giving rights to injured workers and the disabled in general. There are different systems. In one country you have a quota system. In Sweden you have a different system, where the government takes the responsibility of paying the wage differential between the productivity of the injured or disabled worker and the remuneration.

We have to move towards that system in Ontario and I think we can do it. I have been speaking to some boards and I think we all agree that the government itself perhaps is not the best example of employment equity. When I was an MPP, the largest number of people with back injuries who were not re-employed were employees of the city of Toronto and Metro Toronto. I remember the union, Local 79, trying year after year to convince city council that those workers could be used in other capacities. That does not happen unless we have a legislative mechanism that makes it compulsory. I think the government has already shown the way we have to move with employment equity for disabled people and we have to extend that to the injured workers. Unless we do that, we are going to have thousands of people unemployed, not because of their fault, but because society does not give them a chance to be re-employed.

If we do that, we do a great good to our society as a whole and to the WCB system because I think everybody understands that if a worker is on pension, on supplement, there is no income and there is no bread for his family, so he or she tries to go back to the board to get more benefits and then comes to you, to the MPPs. They want to appeal

the pension, and reopen the case because they want a little bit more money basically.

Mr Arnott: Mr Di Santo, I want to thank you very much for your willingness to come and listen to our concern and answer our questions today and to congratulate you on your appointment personally.

As a member of the Legislature who occasionally do not get inquiries about WCB as perhaps do some of the other members, I do not have as much industry in riding—but the thing I find the most frustrating, when I am trying to advocate on behalf of injured workers in riding, is the unresponsive nature of the board. When you make a telephone call there is often a commitment that you will hear back in a certain number of hours and it just does not happen.

If an injured worker could better understand what the basis of the decision of the board was, they could better understand the decision, obviously. My feeling is, there is not enough accountability of the front-line people as to meeting their commitments.

I would like to hear your thoughts on that and if there are any steps you are considering to increase that accountability.

Mr Di Santo: Brian King, who is the vice-chairman of administration and president of the board, will tell you about the programs we are undertaking concretely in order to try to solve the problems raised before you which are very real problems. We are not here to apologize or to try to minimize, because we have to look positively at what we are going to do as opposed to trying to put the blame on whoever.

I think it is true that some of the decisions are probably not understandable. They are not very simple, but if you go before the hearings officer, the quality of the decisions that come from that branch now are infinitely superior because of clarity, because of reasoning with the decision that came out 10 or 15 years ago. We have to make an effort in this sense and we have to train our staff better and make the system more workable, because perhaps the present structure does not lend itself to giving the results the injured workers expect and that we should give.

I do not think it is acceptable that an institution like the board, with the excellent resources, should not function and deliver the service people expect.

Mr Arnott: You said you have personal theory about the true nature of the service delivery problems, and you said about 1% of all claims are denied on the grounds that they are not related to the claimant's work.

I wonder if you can tell me, if you know roughly, of the total claims made at the board, what percentage are denied for whatever reason in the first instance.

Mr Di Santo: That is an answer I cannot give you, but in 1991, from 1 January to 30 April, out of 116,017 claims only 1,022 were denied, which means 0.9%.

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Mr Arnott: For the 1% that were denied on the grounds that they are not related to claimants' work, what steps would you be willing to consider to minimize those

Mr Di Santo: That occurrence is unavoidable because anyone can claim and ask for entitlement but it is up to the board to adjudicate the claim and make the decision.

The Vice-Chair: So far, we have five more people wanting to ask questions, so I would ask those who want to ask to keep them as concise as possible. Keep them nice and short and if possible I would ask the same of Mr Di Santo. Anyway, we will start at the top of the list. I know it is not always easy to answer a question in five words or less so—Mr Wood?

Mr Wood: My question is along the same lines as Ted St had answered. From the top of page 4 I get the impression that too many people are being taken for granted, that the accident might not have happened on the job and we have to spend all kinds of dollars in resources to make sure there is no fraud in that. I am quite surprised when you mentioned the fact of 1% because I read in the paper the other day, and on a number of occasions, that welfare is considered around 3%, income tax is considered around 7%—a certain amount of fraud or whatever involved in it. First of all, I wanted to say that with 1%, maybe we should not be spending all those—

Mr Di Santo: I want to clarify this. These are not cases that are not allowed because of fraudulence, these are cases that are not allowed because they are not considered to be work related. What example can I give you? If somebody has back problems and—no, that is not a good—I do not have an example at this point, but the fraudulent cases are minimal, much less than 1%, just totally insignificant.

Mr Wood: I personally have been involved in some investigations where somebody gets hurt and there is an investigation as a result of it—

Mr Di Santo: These are cases that are not accepted on their merit, not because they are fraudulent.

Mr Wood: Okay. I wish you many happy days and months in your job. Hopefully it will make my job as an IDP member a little easier in future years.

Mr Dadamo: I had mentioned a couple of weeks ago—congratulations by the way—that the office I have in Windsor takes approximately 60% of workers' compensation. Depending on how you do and how your staff and the Workers' Compensation Board here in Toronto does, it will make our life a little bit easier. From page 4 you say, these are your words, "To start with, I want to build a board that is as a human face, a board that is respected for the important services it provides and its sensitivity to client needs." On the last page you used "human approach," which I like. You have a big job ahead of you. How much control do you as chair have to inject healthy and positive changes at the Workers' Compensation Board?

Mr Di Santo: I have been there only five weeks so I am very new and by far I do not control all the mechanisms—probably very little. But what I can tell you is that I have been touring the board and talking to the people. There is a genuine interest in the staff of the board to be helpful in a way that is personal, that is related to the injured in a way that injured workers feel they are understood, that they are dealing with people. And I can tell you that all the staff at

the board have been very helpful until now. Perhaps sometimes we have also problems that are the result of the frustration of adjudicators who are dealing with the workload and are under constant pressure because the telephones ring continuously. Sometimes they probably react in a way they should not, but in general I think the staff at the board want direction and want to feel that at the top the people want them to appear in a certain way. I am confident they will do that. There is nothing mathematical, nothing scientific, but it is a question of human relationship, and we are developing it.

Mr Dadamo: We have your address; we know where you are.

Mr Klopp: I also congratulate you on your new position. It came across a lot over the last few weeks from a number of people, so that I understand you are going to be looking at maybe the policy side—Bill 162. With many of the people on both sides, it is a question of whether the staff even know or understand the bill. What ideas do you have to get the staff trained to know these changes and get them up to speed? Can you give us any ideas on how you are going to get the staff trained and up to speed on such things as Bill 162, because that is the one that has come across?

Mr Di Santo: We are developing, and actually we are going to make a major effort in training the staff. I would appreciate it if you asked the question of Mr King because he is the chairman of administration and is developing the programs. The commitment I can make is that we have come to the conclusion that training is part of the program, and this is one of the problems we will address immediately.

Mr O'Connor: Everyone has congratulated you enough. Thank you for coming here today and being with us. Being someone who has spent a major part of my life in an industrial setting, and seeing injured workers time and time again going through the frustrations, not necessarily receiving adequate rehabilitation—the two people here presenting before you were from CARP. They put a little presentation on. They talked about having a role in helping the board. Is it a possibility that the board can use that organization to perhaps get the rehabilitation aspect played in a more important area? As you say, you want to get a human face put on the board so the injured worker then has somebody he or she can respond to. The rehab worker responding to the person in need, the injured worker, may be a quick way of getting that injured worker back into the workplace. Is that a possibility?

Mr Di Santo: I cannot speak specifically about that organization, but in general terms I can say rehabilitation is one of the priorities we have chosen. It is so essential for the system to work properly. We should be able to give workers medical rehabilitation and vocational rehabilitation so that they can return to a job as soon as possible. So rehabilitation will be a high priority for that reason alone.

As you know, we have rehabilitation strategy in place. The board has changed its approach to rehabilitation in the last two years, and we are now using extensively the rehabilitation community clinics throughout the province. The system is open to input from other organizations and, I suppose, also from the group that appeared before you people.

Mr O'Connor: You spoke of legislation. Is there any way that we, as legislators, can help to improve the rehab at the board? Is there some mechanism there by which you see our helping you to fulfil that role in getting that injured worker rehabilitated and back to work?

Mr Di Santo: As I said before, rehabilitation is intimately connected with employment equity, because unless there is an outlet, rehabilitation becomes meaningless. We need to do two things; one is to rehabilitate injured workers as soon as possible; and two, to give them a worthwhile job after rehabilitation. I think that if the board accepts my ideas we will go to the Minister of Labour and make a formal proposal. At that point it is up to you legislators to see if what we are proposing is acceptable and enact the legislation.

1700

Mr O'Connor: I thank you for that and I look forward to seeing those recommendations come forward.

The Vice-Chair: Ms Murdock, one quick one.

Ms S. Murdock: Thank you, Mr Chair. Actually, thank you again for coming. I know we have spoken an awful lot and I have heard you say this before in regard to society taking responsibility for injured workers and the disabled. I know what my own views on this area are, but just for the record, if the government were to come through with legislation for employment equity for injured workers, included within the employment equity plans that we have, the argument we are going to get against doing that, and I can hear it now, is the whole concept that you have an injured worker who is receiving a pension from the Workers' Compensation Board and gets hired for Ontario Hydro in some capacity and at a full salary and is now receiving full salary plus pension. As I said, I know what my views are on that, but I would like to hear what you have to say in regard to those people who will make that argument.

Mr Di Santo: I think the workers who would be re-employed are workers who obviously have a lower productivity in comparison with other workers who are 100% able. In the employment equity system we know, the government is contributing a certain amount of money to make room for those workers, basically.

As far as the pension is concerned, that is an argument that has been going on for decades. The problem is that, even with Bill 162, there is a recognition of non-economic loss. With the old pension, what was the non-economic loss and what was the economic loss were undetermined, because the workers just received a small pension because of the disability resulting from the accident.

I do not think that is an argument that should be used to convince the legislators not to enact equity legislation, because I think what we are talking about is the right of the person to have access to a job, and that is the primary goal. In terms of compensation, I think that can be discussed, but I do not think it is an argument that can be used to defeat the purpose of the equity we are seeing.

Ms S. Murdock: See, I told you I was going to be quick.

The Chair: Thank you, Mr Di Santo.

Mr Di Santo: Thank you.

The Vice-Chair: Naturally, you will be one of the very first to receive the recommendations of this committee. Thank you once again for coming before us.

BRIAN KING

The Vice-Chair: Mr King?

Mr King: Thank you, Mr Waters, committee member. As you are aware, I have provided a handout of some brief remarks. I do not intend to repeat them here. Perhaps I could just give you a very short outline for the people who are here present.

During the past few weeks you have gotten from the presenters, and I have heard a good number of those people making presentations, the view of the service problems of the Workers' Compensation Board, so I do not intend to repeat those.

Second, being relatively new to the board, you will probably, or may, ask me some questions which I am simply not up on at the present time. I have brought the senior vice-presidents, who will be available if there are technical questions. I will not bother introducing them at the present time. Their names are on my handout.

Third, I do not think you have to impress upon either Mr Di Santo or myself the importance of service. I think you know quite a bit about Mr Di Santo's background. My own is in the field of workers' compensation as well. It is given, and it is in the board's mission statement, that quality service is one of the four top priorities of the board.

Various people have different explanations for why the service problems exist, including the introduction of technological change, the reorganization, the introduction of new legislation and the need to respond to those challenges. One of the things I did notice in a number of presentations, however, is that the dedication of the staff of the workers' compensation board was not being called into question or outlining the service problems. I wish to doubly concentrate on that.

To give you just a brief idea of where we are headed in the shorter term, we are looking at the service problems in view of those that we think we can fix immediately or in the very short term, such as the telephone system. However, bring the Ontario Workers' Compensation Board to a position of quality service, there are those that are going to take a greater time.

I have identified two of them. That is, the importance of the staff of the Workers' Compensation Board to the organization. I have included in the presentation a copy of a recent mission statement on human resources that was presented to staff. It is now up to the executive level to show that it is more than just a paper document, but that we will be putting it into practice. Second, I have indicated that staff training will receive a top priority, and I expect the relatively near future to be able to outline some more concrete details of training initiatives.

I would finally ask that if you have any questions during your deliberations on the recommendations following the public hearings, please feel free to be in touch with myself.

through my office. We can provide technical answers to questions you may need in your deliberations.

I am going to touch on a couple of things that arose during the questioning of Mr Di Santo. One of them was the question of accountability of front-line staff.

The entire basis of my own theory of how you develop well-run and efficient compensation system is that the first approach one has to the board is the most important approach and that if we alienate people at the first step, then we may have alienated them throughout the course of their claim. I myself put the very highest emphasis on the training, the qualifications and the skill levels of the initial adjudication level.

We have expanded our staffing to such an extent over the past few years to meet the increasing demands that we simply do not have staff who are trained to the extent we would like. That is one of the areas, if not the key area, where the training will go. The importance of those first-line adjudicators comes into play all throughout the claim, as it progresses towards maximum medical recovery and rehabilitation, as it affects the numbers going through our appeal processes, as it affects the numbers of telephone calls we get from parties.

So yes, the importance of front-line accountability is vital. It is difficult to hold people accountable if they have not got the proper training and tools and skills yet, and when we are in a position to have given them those skills, then there will be a very strong move. They are accountable now, but not in the way we would like, I think, and part of that is the management's problem of getting them better trained and to develop a better training method so that we do not run into problems of a shortage of trained people.

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Without in any way being defensive about the service levels at the board, I thought it might be helpful to you to get a very brief idea of how change can affect the service levels. You have in your handout something called the Monthly Monitor, and if you turn to page 3 of that Monthly Monitor, you will see a bar graph. The board introduced a good deal of its technological change in the fall of 1990, and I do not think it takes very much examination of this chart to notice what happened to one of the functions at the front end of the compensation system. This is the end where the documents that come in to establish a claim get registered and sent out for adjudication. When things go awry at the compensation board through introduction of change, such as the technological change of imaging that occurred, it is there in black and white to see what happened to the system. There was a breakdown and a need to recover from a very difficult period of time.

In addition, if you would go to the next page, page 4, the board of directors issued a policy directive stating that claims would have to be determined 12 weeks after being registered. Entitlement would have to be decided after 12 weeks. As you can see, again, that is moving down to a period of a better number from where it started out, without being where we would like it to be at the present time. It just does indicate that the board graphically was in a good deal of difficulty with its service problems and some recovery is now taking place. Again, I stress that I am not

trying to be overly defensive, but if you recall getting complaints during certain time periods, I think I might be able to look at some of these charts and predict when those complaints may have been at their height.

Page 8 will give you an idea of the vocational rehabilitation services. The black bar on the left outlines the case levels in 1989-90. You can see that it was relatively constant at around 15,000 claims. Beginning in the 1990-91 period, the white bar shows how much of an increase there has been in the rehabilitation function at the board, the number of new claims that are coming in. In April 1990 we had 15,600 claimants on vocational rehabilitation and in April 1991 we had 30,000. The board predicted a lot of this, because the new act, Bill 162, is far more rehabilitation centred or focused than the previous bill.

In 1990 there were 199 vocational rehabilitation case workers. At present there are over 400 vocational rehabilitation case workers. So the board has doubled the number of case workers, but the case load has doubled as well. In addition, those new case workers now have an aggregate of one years' experience under their belt in training. So we have a problem both with the numbers of people coming on to rehabilitation and the training skills of the people who are doing the rehabilitation.

Finally, in terms of this graphic portrayal of the service, if you turn to page 11 you will notice the telephone inquiries. During the period I indicated, we were having an introduction of new technology, in October of last year. You will note that there were over 21,000 phone calls into the Workers' Compensation Board in a day. That is a massive amount of calls. We have a lot of staff, and if you could divide the calls up among all the staff, that would not be too bad, but they do not want to talk to just a staff member; they want to talk to the person who can help them with their problem and, quite frankly, we have just got too many calls coming in and too few staff to handle them. As the service problems started to settle down from the introduction of the technology, we are now down to around 16,000 telephone calls a day coming in.

One other point I will make on that is that those calls do not come in from 8 o'clock in the morning through until 5 o'clock in the afternoon. Those calls come from 10 o'clock in the morning till 3 o'clock in the afternoon. That is when the load factor for telephone calls comes in.

But again, just graphically, you can see that the board was in a good deal of difficulty. The service levels of telephones during a crucial period of time really accelerated.

Finally, in terms of my preliminary remarks—and with some trepidation, because several people have advised me not to raise this point—service is really a symptom of a problem; service is not necessarily the problem. It is like the temperature or it is like the fever, so I have been searching for the root of the problem in my investigations into the service complaints. I think one of the primary ones is to do a good deal of the first level of adjudication, which was the point you raised. It is vital that we do that, to bring back the morale of the staff, to settle the technological changes, to make sure people have a handle on it.

But quite frankly, workers' compensation boards all across Canada—and I have been to 11 of the 12 boards in

Canada—are to a greater or lesser extent facing because very difficult new problems. Some of those new problems are the new types of claims that we simply have no experience in adjudicating. People are filing claims for chronic stress, and they are filing claims for repetitive motion injuries, which we are working on and we are adjudicating, but they are new experiences for us in the compensation world. Ten or 20 years ago, the average claim was a trauma. It was relatively straightforward as to whether it happened at work. It was relatively easy to adjudicate. Now we are getting new types of claims that we lack the experience base to handle and that are the subject of a good deal of public debate as to whether they properly fall under the workers' compensation system or under a broader system of social benefit. A good deal of debate and argument is taking place there.

Some argue that the solution to that problem does not lie in workers' compensation but in some other system of more universal coverage. I make no comment one way or another, except to put it forth as one of the explanations as to why compensation boards are having difficulties in the 1980s and 1990s with service levels.

The other one I will bring forward for the committee's consideration—and this is in no way ideological; it is based upon my experience in viewing what goes on in the 11 other boards in Canada I have visited—is that Ontario has the most adversarial compensation system I think I have ever seen. By that, I mean that the original intent of workers' compensation was to replace tort as a method of compensating injury. The courts are an adversarial system where two parties come together and argue, and a learned judge makes a decision on the basis of those arguments as to who wins and who loses. The compensation system started off as a system where an administrative body, the Workers' Compensation Board, inquired and investigated a claim for benefit and made a decision.

1720

In Ontario right now the system, for various reasons, is very adversarial. In my opinion, part of the reason the board is having difficulty with its service—and this may be a chicken-and-egg argument—is because of the adversarial nature of the compensation system.

When it is designed so that workers and employers have disputes over work injuries, we do not make it easier for employers and workers in Ontario to worry about the important issues of productivity, maintaining Ontario as a manufacturing base. I, as an outsider, a relative newcomer to Ontario, find it of some concern to see the degree of adversarial compensation that exists in this province. Thank you.

Ms S. Murdock: You have sort of answered the question I was going to ask, based on your 24 years' experience in Saskatchewan and Manitoba. But ending on that, if you ended the adversarial nature—and by that you mean the appeal rights for both sides, I presume—would you be suggesting that the appeal rights for both sides would be removed or limited? Is that what you are suggesting?

Mr King: I am loath to make any suggestions in the area of reduction of the adversarial relationship.

Ms S. Murdock: I know that the comment has been made—not necessarily here at hearings—but certainly has been made that it causes a lot of delays when you just call in as a worker's rep and say, "I object to a claim."

Mr King: Here is my concern: Bill 162 is predicated upon a successful rehabilitation of injured workers back into the workplace. The plan is designed so that injured workers are rehabilitated back into the pre-injury employer's workplace, wherever possible. If, because of the adversarial nature of workers' compensation in Ontario, dispute takes place between the employer and the worker about the compensation claim validity and on the various steps and appeal all along, it is going to be very difficult to maintain a relationship between the two parties that would lead to an effective rehabilitation back into the workplace. In other words, if alienation takes place because of the—

Ms S. Murdock: Particularly by the time you get through the appeal system, it could be two years.

Mr King: I am not claiming that employers are fighting claims because they want to fight against their employees. It is that, because of various things that exist in Ontario, such as the second injury fund and such as merit rating as well as such as the high assessment rate, employers are very concerned about workers' compensation costs.

There are really only three things they can do about it. One is to try to work on safety, another is to work on rehabilitating the worker back into the workplace as quickly as they can, and the third is to fight the claim, to prevent it from being established or reduce the costs on the claim. So my concern is not with the rightness or wrongness of anyone's position; it is whether we can make this system work if too much alienation takes place because of the adversarial system.

Ms S. Murdock: I am not asking you whether it is right or wrong.

Mr King: I agree with that.

Ms S. Murdock: I just wondered whether reasons would have to be given. Is that the kind of thing you are thinking, that when you appeal a decision you do not just appeal it? For instance, it was suggested by the CUPE—I think it was CUPE, one of the presenters—that a lot of the advocacy groups for employers have been hired and are simply lodging objections and appeals from old claims that have been sitting in the files for years. They are just rejecting; I mean, "I object to the decision of," and do not give any valid reasons. Is that one area that—

Mr King: It is very easy for me to be misunderstood in my answer and I want to stress once again: this is not ideological. Appeals are coming at us from all sides.

Ms S. Murdock: Yes. I am not talking just employer side; I am talking worker side as well.

Mr King: We have, internal to the compensation system, two levels of appeal. We have the initial decision being made, we then have the review branch where a review takes place, a paper review, and then we have a hearings branch, and a good deal of litigation does take place at all three layers: at initial adjudication, at review branch and at the hearings branch. All I am trying to point out

at when you involve litigation, you involve rules of natural justice for both sides, and that leads to delays because you simply must allow people time to prepare.

I am merely pointing out that this, in my view, is leading to some question as to whether we can provide the service that people want us to provide. We simply have delays built in through process and through rules of natural justice that we cannot solve easily. And I have this larger concern, which is whether the new bill, which so heavily stresses rehabilitation, will ultimately succeed in getting workers back to work.

Mr Dadamo: You were alluding to an operative word a little while ago called telephones and you used it quite extensively during your presentation. I still find that the first impression is the longest-lasting impression in someone's mind. Now the initial contact is the telephone, right? What is the mandate of yourself or Mr Di Santo or the WCB to help alleviate some of that? In the riding in Windsor where I am, people are still getting answering machines.

Mr King: There are two parts to the answer. Someone had asked Mr Di Santo what authority he has to effect change, and his authority is to keep on me because I guess I am the administrative person responsible. We are working to leave the machine in the compensation system only where it is requested or specifically called by whoever is getting in touch with us. We have a system whereby people can make a simple inquiry about their compensation claim by use of a machine. We will leave messages as to when their cheque was mailed or other messages, and about 1,000 of those 16,000 phone calls a day that I mentioned are being handled by that machine, which means that people are beginning to utilize technology.

But the problem is that they would get that machine whether they wanted to or not. It would say to them, "If you want to talk to me, you press zero," or "If you want to go to..., you press 1." So what we are doing is, very shortly we will be setting the machine—sorry about my simple language, but that is about my level—we will be putting the machine over here with a special telephone number. We will be advertising that heavily, so that people who are utilizing that and who wish to get that direct message that they are after can continue to use it, and they can use it after hours as well because it does not sleep.

But our plan is that the first call that comes in will meet a human voice, and further, that they will not be then transferred to an answering machine. It is called a warm hand-over. We will attempt to put them through to the party they wish to speak to. If that party is unavailable, we will ask them if they wish to leave a message on the answering machine. If they do not want to do that, we will ask them if they want to leave a message with the person who answered the phone, and we will get the call returned as soon as possible. So the difference we are working towards is that a human voice is the first voice you get. I looked at some progress reports on that. There are some logistical problems but we are talking in terms of less than months. We are talking in terms of a short term in which we will be moving to this solution.

1730

The Vice-Chair: Mr O'Connor, you have maybe one and a half minutes.

Mr O'Connor: One thing I asked Odoardo when he was here was about legislators trying to help the process. I have heard there are a lot of delaying tactics written into the act that have been used, not necessarily in trying to help the injured worker receive the compensation he needs, and which in turn puts an added strain on social assistance and other programs.

Is there any way then that we can speed up or enhance the process so that we get that person through the adjudication process and into rehab more quickly? Does it require legislation or just policy changes?

Mr King: The management committee at the Workers' Compensation Board and the board itself are acutely aware of the service requirements we must meet. You will be getting formal requests for legislative amendments from the board, which will serve either to correct what we consider to be drafting errors or, if not drafting errors, parts of the act which perhaps retard us or deter us from providing the proper levels of service.

One thing about workers' compensation, though: It is an issue which affects industry and employees and it is really a social contract between the two of them to some extent. What we have to keep working on is to get that recommended solution from the parties, or if both of them do not agree that it is the proper solution, through a consensus model, then it may not work as well as we would like. We will be coming forward with recommended improvements to the compensation system. Right now I could not volunteer anything for you.

The Vice-Chair: I thank you, Mr King, for coming before us. I would also like to take this opportunity to thank you, Mr Di Santo, and the people from the board. They have been very attentive throughout these hearings and I know they are awaiting our report with bated breath. They just cannot wait to see what we come down with. Of course you will receive your copy as soon as Mr Di Santo does.

ORGANIZATION

The Vice-Chair: There are a couple of other things we have to deal with, first a budget that was passed out. Are there any questions on it? No questions?

Mr Ramsay: Are we still on the record? Is this discussion on Hansard?

The Vice-Chair: We can be—unless you wish—

Mr Ramsay: It does not matter. I was wondering first of all whether we have set a date to begin the summer sessions for committee. Has that been decided by the House leaders yet?

Ms S. Murdock: We cannot hear.

The Vice-Chair: Okay, we will hold everything up for a sec.

In answer to that, item 2 on our list is the sitting times for the summer.

Mr Ramsay: All right. I guess that is to do with the budget. You are presuming we are going to travel. Has that been decided yet?

The Vice-Chair: It appears at this point—and on Monday we will probably be discussing it—we are hoping to have a subcommittee meeting which I am also to inform you of. It looks like we will probably have wage protection, and there was some assumption that we would travel around on that. I believe that is where it is. With the Chair not being here, I am not exactly sure.

Mr Ramsay: My question is, is it not a little difficult to decide on the budget when we really do not know what we are going to be doing?

The Vice-Chair: Okay, assuming we do get the wage protection—and all indications from the House leaders are that it will be at that point—that is what we will be doing. They are looking at five weeks of hearings. That is what we are going to request. I think the House leaders have agreed there will not be any committees meeting until at least 29 July. We are looking, hopefully, at August and 1 September, something like that. This was just a budget we had brought forward based on those assumptions.

Mr Klopp: This is only my second time on one of these budgets. I am assuming that just because we pass this budget, it is a fairly standard procedure they go through, and it does not mean that just because we put down travel time, we are going to go and say, "Well, let's go travel." It is just a standard procedure for us to pass, and then I hope we will all frugally make sure we do not waste any more money on this project.

I was concerned last time about some of the numbers we had. But it was pointed out by the clerk that just because there are \$10,000 for printing, we do not go and spend \$10,000 for printing, but that you might as well have that in your budget so that you know what is going on. I do not have a really big problem with this budget, knowing that I am also part of the group. If we do not have to travel, we should not travel, but the money should be there. So if you are looking for a motion to pass it, I am ready to pass it now and get on with it.

Ms S. Murdock: I move that the supplementary budget in the amount of \$226,770 be approved, and that the Chair be duly authorized to present the budget to the Board of Internal Economy.

The Vice-Chair: Any further discussion of Ms Murdock's motion? There being no further discussion, all those in favour of the motion? Opposed, if any?

Mr Dadamo: Not opposed; for the sake of being able to make some summertime plans like regular people do, is it the subcommittee that will put together the time frame as to when we are meeting during the summer months?

The Vice-Chair: At this point, that is very much in the House leaders' hands. The three parties will sit down and prioritize who sits when and which committee sits when and then it comes back to us. That is my understanding.

Ms S. Murdock: Mr Chair, that is true. From 10 August to 15 August, I am in BC on the Canadian Regional Conference of the Commonwealth Parliamentary Association,

and given that I am also the parliamentary assistant to the Minister of Labour and will be carrying the Wage Protection Act, if that is the legislation we will be carrying, I will not be able to sit during that time.

The Vice-Chair: I believe they are taking all those things into consideration. I seem to recall seeing something where they are going to try to make sure all members of the committee have only one major committee function through the summer months, therefore we may assume our fearless leaders and the whips in the House leader's office are going to determine what committee we are going to go on and where we will be.

Ms S. Murdock: I do not care what happens; I am going to be in BC on 10 to 15 August. They can schedule it if they wish, but I just want you to know.

The Vice-Chair: Wait a minute. We are not finished yet. We have a couple of other things.

Mr Ramsay: I insist that the member be here with us.

The Vice-Chair: There has been a suggestion that the subcommittee only meet on Monday at 3:30 and that we meet as a whole committee on Wednesday, our regular committee day, and that we would be prepared to give instructions to the researcher on Wednesday.

I think it was in Mr Di Santo's presentation today that there was some talk about an informal visit to the board, if you so wished, outside of our normal committee time, which would not cut into this. So maybe if everyone wanted to talk to their subcommittee person between now and Monday we might be able to get that put together if so wished.

Mr Ramsay: Mr Chairman, the purpose of the subcommittee meeting on Monday is to organize our schedule.

The Vice-Chair: Yes.

Ms S. Murdock: One other question to the researcher: In the summary of witness recommendations we have been getting—which are so well done, I might add—I was just wondering how much work would be involved in summarizing in chart form or whether it could be done. For instance, so many of the groups had such similar views or repeated the same kind of problems that occurred, that would really just make it a lot easier to integrate them.

The Vice-Chair: This is the number one concern. The number two concerned—

Ms S. Murdock: No. A chart that says "telephone along the side, for instance, would have "telephones" along the side, the groups down a side and you would just put a dot or check or something on those groups who stated that—

The Vice-Chair: Oh, we are into a camping book now.

Ms S. Murdock: No, you would have one page with the information on it, really. That is what I am suggesting.

Ms Lusk: In addition to that type of summary.

Ms S. Murdock: It is just a question, Mr Chair.

Ms Lusk: I will do my best. I will see if I can put something together for Wednesday.

Ms S. Murdock: Thank you.

The Vice-Chair: Any further questions? Any other discussion? Hearing none, I adjourn the meeting.

The committee adjourned at 1742.

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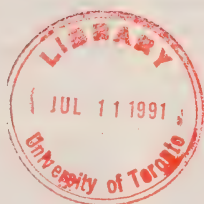
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Comité permanent du
développement des ressources

Organisation



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 24 June 1991

The committee met at 1621 in committee room 1.

ORGANIZATION

The Chair: This meeting has begun. There are two items on the agenda for this meeting. One is to deal with the agenda for the two weeks this committee has to consider Bill 70 during the course of this summer. The second is to give instructions to the researcher regarding the report to the Workers' Compensation Board. The second part of the meeting will be held in camera, which means there will of course be no record made of that part of the proceedings.

The fact is it is no longer negotiable as to what weeks the committee will sit. It will sit for two weeks. The House members have agreed on that. The first is the week of 29 July and the second is the week of 19 August, so the two weeks are going to be split up by that little hiatus. That is the number one.

The rest of what happens during those two weeks is up to you and that is to say is entirely within the power of, this committee. I would entertain any motions as to, I suppose the first of all, the issue of travel versus no travel, be it a little less or a lot. Are there any motions in that regard?

Mr Waters: I move that we do not travel.

The Chair: Mr Waters moves that there be no travel, for both weeks, therefore, be dedicated to Toronto, I presume. That is inherent in the motion. Do people want to discuss that?

Mr Offer: If I can start off the discussion, I hope we will vote against that motion, and I will tell you why. Without being specific as to any one particular city, I think there is no question that a great many people and companies have expressed concern with this piece of legislation. I say this in light of the anticipated amendments from the government, but I think we should not make the mistake that we know all there is to know about this legislation in terms of its impact, its ramifications and what it means to business in general and to workers.

I would request that we vote against this motion. I think there is sufficient concern around the province that would warrant not only the public hearings, but also public hearings on a travel basis.

We have but two weeks. I think a lot of very good work could be accomplished. In the summer, we have, if not the obligation, certainly the opportunity to get out from this place and into the communities where people have expressed concern with respect to particular legislation and to wish to provide their opinions on any one piece of legislation.

I think right now we are dealing with one such piece and I would hope that accordingly we would vote against the motion and permit travel throughout the province in the time permitted by—I guess it is—the whips of the legislature.

Mr Ramsay: I would want to ask why. I take it that because Dan Waters has moved this motion, this is the wish of the government. I would certainly like to find out why a government that purports to be open and accessible, and we all support that, would wish the hearings to be confined to Toronto.

This process is one of public hearing to allow the public access to the work we do. This is now a discussion on second reading of the principles and the specifics of this bill. The government in its wisdom has already reacted to the public, which is great, and I certainly applauded in the House when the Minister of Labour brought forward those amendments. There is a possibility, I suppose, of more amendments in this committee process; hopefully there is.

It just seems to me that it would be arrogant of us, as a committee made up of all three parties, to say, "Because, unfortunately, we only have two weeks, if you do want to come to our committee and make comment on this, make some suggestions hopefully, be constructive or be critical, whatever it is, you have to come to Toronto to do that." Certainly we should be reaching out to people in Ontario, as limited as we are.

The itinerary that has been suggested is probably too much and we should only restrict ourselves to main centres. I cannot see us going out to the very far places that have been proposed, but certainly we should dedicate four or five days of those two weeks to try to get out to main centres so that each region is represented by one stop, so that the people of that region can make their views known to our committee.

Mr Klopp: I am going to speak in favour of the motion, and as one who probably would on all sides. Two weeks is not a lot of time and, as was mentioned, where do we go? This is a pretty big province, and if you go to one place, then there is another place. As one who had time with Pat Hayes's group in the Ministry of Agriculture and Food, having a very short time, we can waste a lot of time.

It is also summertime, and I go from the perspective that you may go to a town, but there are a lot of people who are not going to show up because it is summertime and they have a lot of other things to do, and I think there are groups who want to come and praise this thing because it is a darned good bill. I think they would appreciate it if we just stay in one place and allow them lots of time to come here and then we can have good discussion.

There was an assumption that we know all that is going on and so we will just keep it hidden in here. I do not look at it that way. We had the workers' compensation thing and we had a lot of groups find their way to Toronto.

Having only two weeks to look at whether there are any problems with this bill, I think we should have it here, where we can allow someone to come in and take a whole hour, rather than us having to fly to Ottawa and be there

for only two hours—I even wonder how many people would show up—and then having to turn around and spend five or six hours flying to Windsor so that we can say, “Well, we opened up our arms.” But there are also a whole bunch of other committees this government is doing that are going around this province.

We have already changed the major issues that some groups had in this thing, and for this particular bill, I think the groups that really, truly have some praises and concerns will come to Toronto and we can take the time for two weeks to listen to their concerns and then go clause by clause or whatever. For that reason, in this particular bill I think we should just, because of all those other ones going out, stick here for two weeks and do the job.

Mr Waters: When we look at the calendar here, it goes on to say resources development will have one week of public hearings and one week of clause-by-clause. To me, that means the House leaders have already cut us down to actually one week of hearings. By the sound of it, they have all agreed above us that we are down to one week of hearings.

The Chair: That is not my understanding. I should indicate I am unclear in that regard.

Mr Arnott: I would like to ask a general question. What would the costs be of travelling for one week for a committee such as this, approximately?

The Chair: It is not cheap. Perhaps the clerk would give us a ballpark. Surely there are ballparks in that case.

Clerk Pro Tem (Ms Manikel): It really depends where we travel to. But you have to figure on interpretation because a lot of the places we would be going to, and major places, would require that we have English and French translation. It would be getting close to \$10,000 a week by the time you get transportation, accommodation, meals, etc, for 20 people.

1630

Mr Arnott: Okay. If we assume we are going to be spending only one week on public hearings, one week on clause-by-clause, does that assume we would require one to two days of public hearings in Toronto, would you think?

The Chair: Right now the question is whether there is travel. I think it is unfair to ask the clerk that question, because at the outset we indicated that the first thing to consider was whether there was going to be travel. Then it was up to this committee to set an itinerary for itself, whether it travelled or did not.

Mr Arnott: But presumably if there is travel there will still be some days spent on public hearings in Toronto nevertheless.

The Chair: Perhaps Mr Waters or anyone supporting the motion would be prepared to respond to that.

Ms S. Murdock: To the question of whether there would be a couple of days of hearings in Toronto as well as the week on the road, or included within the week on the road?

Mr Arnott: Included in the week of public hearings. Would there be one or two days in Toronto?

The Chair: As I indicated, that is premature. Right now, the decision is whether there is going to be a travel, and then it is the second level of discussion, pending on what the committee decides in that regard, it is to determine how much travel, how little travel and how that agenda is broken down.

Mr Arnott: What I am getting at is that it would seem to me that almost a week or approximately a week of clause-by-clause is required. If you assume that as your first proposition, then you assume that one week of travel and you also assume probably two days of public hearings in Toronto. So I would submit that, given the cost as well as the practical difficulty, travel would probably not be in our best interests on this bill.

Ms S. Murdock: I agree with Mr Arnott.

Mr Hugert: I agree with the motion and want to speak in favour of it. I understand the concern of the Liberal members that, at least from their perception, the government is not intending to be open and reach out to its constituency. Quite frankly, that is not the case. There are at least five committees travelling the province this summer on major pieces of legislation. Originally I think we were scheduled for three or four weeks of hearing time. I think that was the perception. The House leaders have reduced that to two weeks and I would assume it is because the contentious parts of the bill have been dealt with.

Because of that and because of Mr Arnott's point of cost, I think we must not create an illusion of reaching out which two-hour hearings in the city would do. It would create the illusion of wanting to talk to the public, but we would not have enough time to do it. I think that because of the cost factor and the illusion factor, if you will, we are serving the public much better by being here in Toronto and dealing with the issue, perhaps allowing more time for witnesses. Those groups who have a comment to make on the legislation certainly have access to Toronto, and for those reasons I think it is the most responsible thing to do given the time frame we have.

Mr Offer: I had thought earlier that I had completed my comments. However, listening to some of the remarks by the government members moves me to make a few more comments.

The first is that there is no illusion. I think it is false to say there is some sort of illusion that a committee fabricates when it goes out to other communities. That is not the fact at all. The fact is that we have two opportunities during the year for a committee to travel; one opportunity is in the summer recess and the other is in the winter recess.

Right now we have what is viewed as a very important bill referred to this committee for hearings. There is whether one wishes to admit it or not, a great deal of opinion surrounding what this particular bill means and what its implications may be. I think that, far from illusion, we have a responsibility within the time given us to do what has always been the role of a committee; to order its own affairs and to go out to communities to try to hear some of those concerns. I do not believe that to be

ussion at all. I believe it to be one of the most important functions of these committees.

I say that asking the government members to reconsider the support of a motion to stop, in effect, without any question, a number of people in a number of other communities from providing face-to-face input on a bill they feel is very important. It matters not as to the time the House leaders have given us; we all recognize there is only a certain amount of time that can be given. It is how we as a committee decide to use that time. I believe that in the summer session the committee's time is very well spent, an important, contentious piece of legislation, going out to communities to listen to some opinion on those particular bills. I just ask the government members to reconsider.

Mr Huget: I want to be very clear that there is not an intent on my part to suggest it is an intention to create confusion. I am saying to you that with the inadequate time at one-week schedule allows us in terms of the road, if we were out on the road and have very short public hearings we may get to see people in their own locations, but I question whether we can do those groups justice in terms of the time allowed.

I think we could get a much higher-quality presentation and a much higher quality of input here in Toronto because I believe we can take more time within our own ordering of time, within that one week, to hear those concerns. Based on that I think it is being very responsible, in fact, to increase and have a desire to have the quality rather than the quantity of input.

Mr Offer: In response to that, I think there are a number of groups outside of the Toronto area that have the capability and capacity to provide a quality type of presentation to us, if only we would vote against the motion and go out and listen to them.

Ms S. Murdock: It certainly is not that we are not willing to listen to people. But prior to the amendments that were made and announced by the minister, the hue and cry was loud and was heard I mean the removal of theonus on officers and termination of severance pay, liability being removed and charitable non-profits being removed. Since that time I have had employers in my office, in my riding and in my ministry as well advising me that now they are quite satisfied and have not got any concerns in that particular regard and do not disagree with the bill.

Admittedly, there would be groups probably still wanting to come and see us, I have no doubts about that, but I just do not think the volume would be there and I think the taxpayers of Ontario, with all the other groups on the road, are going to need a better reason to be out travelling. Certainly all expenses are paid for any group that wants to come here, as I understand it, and I think that warrants some days of hearings here in Toronto. But I do not think we should be spending that kind of money to be out in the other communities when you have the select committee on Ontario in Confederation and government services, and there is another one, three of them. Certainly we have 45 members available to sit on committees. I do not know how the rest of you are going to be able to sit on five. That

is the other thing, too, you know; if we are all out on the road it is going to be very difficult.

Mr Offer: I appreciate the concern, but it is the party with the fewest number of members that is saying: "We'll look after ourselves. We'd like to go out on committee and on travel."

The committee divided on Mr Waters's motion, which was agreed to on the following vote:

Ayes—7

Arnott, Dadamo, Huget, Klopp, Murdock, S., Waters, Wood.

Nays—3

Cleary, Offer, Ramsay.

1640

The Chair: That puts this committee in a position where it does not travel, therefore it stays in Toronto. Can we have a motion as to its itinerary? We are talking about number of days per week and hours per day, if somebody wants to sort of omnibus it, a little bit of agenda.

Mr Offer: Just as a point of information: In the two weeks, do we have the 10 days, the Monday to Friday?

The Chair: Yes.

Mr Offer: Are you going to just keep it to Wednesday, 1 pm to 2 pm?

Ms S. Murdock: This person, this member for Sudbury—

Mr Offer: We have a message from the Minister of Labour.

Ms S. Murdock: No, from Sudbury riding. The member for Sudbury would like to at least spend Friday in her riding. Therefore, I would request—and I guess this is a motion—that we sit Mondays to Thursdays, and allow the members back to their ridings on Fridays.

The Chair: Are you prepared to suggest times for Monday through Thursday?

Ms S. Murdock: My previous experience has been 10 until 6, with a break for lunch.

The Chair: Say 10 to 12 and 2 to 6, is that what you are suggesting as a part of your motion?

Ms S. Murdock: Sure.

The Chair: And that includes Monday morning as well.

Ms S. Murdock: I know we did not in the fall, but I do not know what the standard practice is in the summer.

The Chair: It has been a practice among some not to start till the afternoon on Mondays.

Ms S. Murdock: All right, so Mondays from—

The Chair: It is your motion.

Ms S. Murdock: From 2? Geez, that is late.

The Chair: A hundred bucks a pop per person.

Ms S. Murdock: From 1 until 6, and from 10 to 12 and 2 to 6 for Tuesdays, Wednesdays and Thursdays. That is my motion.

The Chair: Ms Murdock moves that the committee sit on Mondays from 1 until 6, and from 10 to 12 and 2 to 6 on Tuesdays, Wednesdays and Thursdays.

Mr Arnott: Why would we not meet Monday mornings? Is there anyone who has difficulty coming in Monday?

Ms S. Murdock: I believe it is to allow travelling time for those members—pardon?

Mr Arnott: Not myself.

Ms S. Murdock: No, but you see you are in an enviable position of being near Toronto. There are those of us such as Mr Ramsay and myself who live in the far reaches of the north and have to travel down, and it is a lot easier if we can do it in the morning on Monday and then get here some time in the morning.

Motion agreed to.

The Chair: Does anybody want to generate some discussion about whether or not costs of those persons who wish to travel in from outside of Toronto will be borne?

Clerk Pro Tem: Normally, the committee looks at it on an individual basis.

The Chair: If you want to delegate that to the committee on a one by one, the committee is going to have a hard time doing that, if it is going to be absent. How do you want to deal with that? Are there any motions or do you want to leave that in the air?

Ms S. Murdock: Correct me if I am wrong, and maybe the clerk can clarify this, but do those members who have costs submit them to the clerk? Is that what you are talking about?

The Chair: Perhaps the clerk can respond as to the status quo.

Clerk Pro Tem: I am sorry, I misunderstood. That is right. Normally, at the end of the week, the clerk will hand out your expense claims, which you complete. That is normal. I thought we were talking about witnesses.

Interjection: We are not talking about witnesses?

The Chair: Yes, we are.

Ms S. Murdock: We were? Well, I do not know that procedure at all.

The Chair: Could the clerk explain the status quo? If this committee does nothing, what will happen with witnesses who want to travel in from outside Toronto and who want to be reimbursed for their expenses?

Clerk Pro Tem: Normally, when they are making their request to make a presentation, they would indicate their need for expenses. I would bring that request to that committee. Usually at the start of a meeting we would decide whether we would pay the person's expenses to travel to Toronto and home again and what expenses the committee would pay. It is done on an ad hoc, one by one basis. That has been the way the committees have operated in the past.

Ms S. Murdock: It just makes inordinate good sense that those groups that wish to come and present before the committee should have their expenses paid without our having to—I would make a motion stating that groups

presenting to us should have expenses paid and do it as you cannot? Can we?

Interjections.

Ms S. Murdock: All right, rescind my motion whatever.

Mr Huget: I am not too familiar with the procedure but could we not handle it the way it is normally handled in terms of what the clerk has already arranged, that request is made at some point in time for expenses and then we deal in committee with whether we are going to pay them? I think that is the most efficient way to deal with it.

The Chair: That can be done, which is why I asked the clerk to explain the status quo. In other words, if we do nothing or say nothing, the status quo will prevail.

Mr Huget: So am I to understand that an inquiry made of witnesses wishing to appear as to whether they require their expenses to be covered? Is that correct?

The Chair: Would the clerk respond, please.

Clerk Pro Tem: Generally we do not say anything unless they ask that it be refunded. If they make some comment, we will take the information and raise it with the committee.

Mr Huget: If that handles most circumstances and there is no problem in terms of people's expenses. If you contact the witness they will certainly ask you, "Are our expenses going to be paid?" Does that qualify as a request to pay them that will be considered?

Clerk Pro Tem: If I am talking to someone on the phone and they say, "Will the committee pay my expense to come to Toronto?" I will tell them at that point that cannot speak for the committee, it will have to be decided by the committee, but I will take that request to the committee.

Mr Huget: So that qualifies as a legitimate request right from that point on, and I personally think that would handle most circumstances.

The Chair: Mr Offer, did you have anything to say to this matter?

Mr Offer: Just that I agree with what you are doing.

Ms S. Murdock: I have a question. If a CEO were to come and make a presentation before this committee as part of his expenses would be the cost he would consider himself worth per day—if he came from Thunder Bay for instance, do we normally pay transportation, accommodation and meals?

Clerk Pro Tem: It would depend on where they are coming from, for example. But normally the committee would pay the transportation to and from Toronto for one or sometimes two people from the organization, and if they need to stay overnight, their accommodation and meals.

Ms S. Murdock: So we do not cover other costs?

Clerk Pro Tem: We could. It is up to the committee and each committee will make its own decision. I am just telling you that in the past we have not generally paid for their time unless we have considered them expenses.

Witnesses and have specifically asked that they come forward, which is a totally different case.

The Chair: The committee has approved 3 1/2 days a week of sitting for a period of two weeks. It has been suggested by the clerk that half a day will be required for the initial briefing, and I am hoping that is agreeable, because that leaves three full days in the first week and 3 1/2 days in the subsequent week to be divided between presentations and clause-by-clause. Can we have something put on the floor with respect to the breakdown of briefing, clause-by-clause and presentation.

150

Mr Waters: I will move that the first week be hearings and the second week clause-by-clause, with the first half-day being briefing.

The Chair: Any discussion about the motion on the floor?

Mr Offer: I just ask everyone to consider the possibility of reducing the clause-by-clause examination from the three and a half days to two days.

The Chair: Are you moving an amendment?

Mr Offer: I am moving an amendment.

The Chair: Okay. There is an amendment on the floor. Discussion on the amendment?

Mr Offer: The reason for my amendment is that it provides greater time to hear representations from those who wish to be heard. I think if it turns out that there are a great many people who actually want to be heard on the bill—I do not believe that will be the case—we could always extend the clause-by-clause hearings in the committee, but I think we are going to have a number of people who will want to make some presentation. If memory serves me right, after the clause-by-clause analysis in this committee the possibility is that it is referred back to the legislature where a clause-by-clause analysis can again take place.

I would like to use some of the time for clause-by-clause in the committee. I think it is important to see the amendments the government moves and to have them moved, but I also think it is important for us to use as much time as possible to listen to the general public on this legislation. By giving such a wide berth to clause-by-clause we in effect are having public hearings for one week. I just think that a bill of this nature deserves more time.

Ms S. Murdock: Actually, Mr Offer's amendment to the motion is not all that out of line, because the majority of clauses, over 30 of them, are just removing officers from the present amendments. They are going to be very similar and simple to run through, I would hope, although my experience has been that the simple ones are usually the ones that take for ever. I still think at least three days are needed, so I guess on the basis of what he has moved I would have to say no.

Mr Klopp: I am afraid I am going to have to disagree with the motion, because at this time I do not think we really know how many people are coming. There seem to be a lot of clauses that need to be looked at clause by

clause. That is part of our job after we hear people. Once we do find out how many people want to come, I am sure—I am probably right—later on we can always say, "There's a lot more people who want to come," and then we can decide that as a group. But right now I think we should leave it at its present state and then we will see how many groups want to come.

The Chair: Any other discussion on the amendment?

Ms S. Murdock: Not on the amendment; I just have a question. It is hypothetical. What happens if we do not get as many people as we think we are going to get coming in? Are we then left—

The Chair: The answer to the question is that if there are three and a half days reserved for presentations and only two days of presentations, you stay home for the balance of that first week or you make an ad hoc decision to accelerate clause-by-clause, if there is agreement. Mind you, that would be something where there might have to be some degree of unanimity because of the fact that people would arrange—I do not know, but it would be an interesting discussion. The committee, I think, has the power to shuffle around, as Mr Klopp indicated, in the midst of its hearings, subject to what people may say. Any further discussion of the amendment?

Ms S. Murdock: Just as a clarification, could I have the motion again, please?

Mr Waters: The motion was for it to be divided, one week for hearings and one week for clause-by-clause, the first half-day to be for our overview.

The Chair: The motion was for three and a half days of hearings, one-half day of those three and a half days for briefing, and then the balance, the three and a half days in the second week, for clause-by-clause.

The amendment by Mr Offer was to add another day and a half of presentations, and reduce the total amount of clause-by-clause time to the last two days of that second week.

Mr Huget: Are we voting on the amendment?

The Chair: Voting on the amendment. Those in favour of the amendment, which is effectively to—

Mr Offer: A recorded vote.

The Chair: Okay. The amendment is to reduce the clause-by-clause consideration from three and a half days to two days.

The committee divided on Mr Offer's motion, which was negated on the following vote:

Ayes—2

Cleary, Offer.

Nays—7

Arnott, Dadamo, Huget, Klopp, Murdock, S., Waters, Wood.

The Chair: Any further discussion on the unamended motion on the floor? All those in favour of the motion? All those opposed?

Motion agreed to.

The Chair: That effectively, subject to what anybody might want to add, completes the structure of those two weeks but for the matter of advertising.

Ms S. Murdock: I think we should take out a full-page ad in the Globe and Mail.

The Chair: Well, I know how to get into the Toronto Sun.

Is anybody prepared to make a motion about the ad? Of course, people have been provided with a draft ad that is there only for discussion purposes or something.

Mr Huget: Sure, I will move it.

The Chair: Mr Huget is moving the ad format as contained in this draft.

Mr Huget: Subject to the deletion of the travel, which obviously we are not going to do.

The Chair: Quite right. So the ad would read: "The standing committee on resources development will meet to consider Bill 70, An Act to amend the Employment Standards Act to provide for an Employee Wage Protection Program and to make certain other amendments, during the weeks of 29 July and 19 August at Queen's Park. The committee invites written submissions from individuals, groups or organizations wishing to comment on the above-mentioned bill. All briefs should be deposited with the clerk of the committee no later than Friday 16 August 1991. Requests for appointments to appear before the committee to make an oral presentation should be directed to the clerk of the committee not later than Friday 26 July 1991," and then the usual suffix showing address and so on. Is that the motion?

Mr Huget: Yes, Mr Chairman.

The Chair: Any discussion on that motion? All those in favour?

Motion agreed to.

The Chair: Would anybody please make a motion about the breadth and scope of that advertising?

1700

Ms S. Murdock: Where it appears, how many times it appears, etc?

The Chair: Yes. Does the clerk have any advice as to usual procedure?

Clerk Pro Tem: Because there are going to be a lot of committees advertising, we are trying to have them all placed together so that even though they will be paid for by individual committees, we would basically be buying up a page in all the dailies. We think that will be more effective because people will see it. They will all be running on the same page. That is what we are trying to do.

Mr Wood: All the dailies in the province?

Clerk Pro Tem: Yes.

Mr Huget: Is advertising a budgeted expense of this committee?

The Chair: Yes, it is. That was part of the budget proposal.

Mr Huget: If somebody is taking out a full-page ad, how is that cost prorated to the different committees?

Clerk Pro Tem: I am just explaining. We are asking the newspapers to put them all together. We can do that. We would still be paying for whatever size our ad is. Because there will be five ads, probably it will fill up—we it depends on the format of the paper, obviously, but in the Globe, say, it would fill up probably about a half. In the Sun it would probably be most of a page. It is just a placement thing. We go through one advertising agency that will get this so that all the ads are in the same location in a paper for us. We find that by blocking them together they stand out more. Basically, that is what it comes down to. We get a better response. That is what we as clerks have discussed, putting it all together so that they all run the same day and our phones really start ringing.

Interjection: One day?

Clerk Pro Tem: That is up to the committee.

Mr Huget: I was just curious because of the phrase you used, a full page. If you purchase a full page in the Globe it is not nickels and dimes. I was just wondering how that was prorated among the committees. You are saying it may or may not be. They will all be somewhere in the same section of the paper or the same page of the paper, but you are not purchasing a full page.

Clerk Pro Tem: No, that is true. We are not purchasing a full page. What we have done in the past, though, we have run four ads together so that they are in one block touching each other. Because of the cost and a lot of what it is more eye-catching. We have found that this is more effective.

Mr Wood: The reason I asked about its being all the dailies in the province, in my riding, having a high percentage of French population, close to 65%, there are a lot of French daily newspapers and most of the people read the weekly newspaper. There are two French weekly newspapers that come out and there are two or three French radio stations. I am wondering if we should have that covered.

The Chair: Perhaps the clerk could respond to that. That is an interesting issue. Basically, what you are asking is, as I understand it, are these going to be bilingual ads and if they are going to be bilingual are they bilingual everywhere and who decides where?

Interjection.

The Chair: Well, because Mr Wood is not alone. There are some others of us who come from communities where large portions of the community are francophone or Italian-speaking, even the occasional Ukrainian down where I come from.

Mr Wood: You have 36% French.

The Chair: I have 16%.

Ms S. Murdock: I have 34% francophone.

The Chair: Perhaps the clerk could respond to that. How does the clerk respond to those problems?

Clerk Pro Tem: What we could do is something that the committee has to decide. Correct me if I am wrong here. The one French daily we used to have still functioning. Sorry, I did not check that before I came to the meeting but there is the one French newspaper in the Ottawa area.

the other thing is that committees often decide to advertise in the French weeklies, again because it reaches more people.

The Chair: I think somebody is crying out for a motion here with respect to this.

Mr Huget: I am prepared to move a motion that here we cannot find a French daily we advertise in the French-language weeklies.

The Chair: If I can just ask for clarification, what about the areas in which there are no French-language weeklies but, as Mr Wood and Ms Murdock point out, strong French communities? What about those areas that are recipients of the French Language Services Act? Would you want to expand your amendment?

Mr Huget: I would certainly not mind expanding it, but I do not know how one would do that. If we are talking about newspaper advertising and if there are not, unfortunately, any French-language dailies, then we have an obligation, I feel, to go to the French-language weeklies. I think that will cover that off, but I am not sure about other services.

The Chair: Maybe your amendment could include that in those areas covered under the French Language Services Act the ad should be bilingual notwithstanding.

Mr Huget: Yes.

Ms S. Murdock: It should be anyway. Are we limited to print or are we going audio as well?

Clerk Pro Tem: It is up to the discretion of the committee. Normally we just budget for the print ads.

Ms S. Murdock: No, I was thinking in terms of the areas where there is no weekly or daily. There are lots in the north that are in that boat. I am not going to move anything on it, though. It is just a thought.

The Chair: All those in favour of that motion, please indicate.

Ms S. Murdock: Which motion are we talking about?

The Chair: The one Mr Huget just presented. Opposed? Motion agreed to.

The Chair: That now completes the matter. Are there any other motions to put forward regarding committees, committee structure or advertising? That completes the committee direction with respect to those two weeks of committee hearings. We will now go in camera.

The committee continued in camera at 1707.

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of Ontario

First Session, 35th Parliament

Official Report of Debates (Hansard)

Monday 29 July 1991

Standing committee on
Resources development

Employment Standards
Amendment Act (Employee
Wage Protection Program), 1991

Assemblée législative
de l'Ontario

Première session, 35^e législature

Journal des débats (Hansard)

Le lundi 29 juillet 1991

Comité permanent du
développement des ressources

Loi de 1991 modifiant la Loi
sur les normes d'emploi
(Programme de protection
des salaires des employés)

Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 29 July 1991

The committee met at 1417 in committee room 2.

EMPLOYMENT STANDARDS AMENDMENT ACT (EMPLOYEE WAGE PROTECTION PROGRAM), 1991 LOI DE 1991 MODIFIANT LA LOI SUR LES NORMES D'EMPLOI (PROGRAMME DE PROTECTION DES SALAIRES DES EMPLOYÉS)

Consideration of Bill 70, An Act to amend the Employment Standards Act to provide for an Employee Wage Protection Program and to make certain other amendments.

Étude du projet de loi 70, Loi portant modification de la Loi sur les normes d'emploi par création d'un Programme de protection des salaires des employés et par l'adoption de certaines autres modifications.

The Vice-Chair: We will call the meeting to order. I would like to say welcome back. It has been a month, and it is nice to see all these tanned faces out here. The first person on our list of presenters is the minister, if he would come up and take his seat.

Mr Offer: A point of order, Mr Chair: We have the minister at 2 o'clock and the deputy at 3 o'clock. Is it your intention, with the minister and the deputy, to combine these two, or is there something—

Hon Mr Mackenzie: The only thing we would combine would be questions, if I wanted some assistance on questions.

Mr Offer: The deputy does not have a specific presentation to make.

Hon Mr Mackenzie: Yes, he will have some comments.

The Vice-Chair: With everyone's indulgence, I believe had been set for 2 to 3 for the minister, so we are starting a bit late and we will move the clocks back accordingly. I imagine that is what we would do. It will go to 3:20.

MINISTRY OF LABOUR

Hon Mr Mackenzie: My remarks will be very brief. Before I begin my remarks, I would like to take the opportunity to tell you that I feel a certain amount of personal satisfaction introducing a bill which I believe is a major initiative for the people of Ontario. It is one of the most important steps this government has taken to ease the damaging effects of the recession and forms part of the government's comprehensive measures to help workers through these difficult times. The employee wage protection program is a necessary and timely piece of legislation, and I hope this committee will report in a thorough and expeditious fashion so the House may proceed to third reading as soon as possible.

Since the Premier announced the government's intention to set up an employee wage protection program last October, my ministry has received more than 15,000 po-

tential claims from workers who are owed wages. I think it demonstrates how much this program is needed that these workers have come to us on their own initiatives and without any publicity campaign aimed at them, and their number is growing every day.

We cannot let long deliberations punish these workers even more than they have been hurt already by circumstances beyond their control. We cannot forget the underlying principles behind Bill 70. As I have mentioned before, the main purpose of the employee wage protection program is to help workers recover unpaid wages when their employer is bankrupt, insolvent or does not pay because of other circumstances. I believe that with Bill 70 we have strong and effective legislation that will allow workers to recover money they have earned and to which they are most certainly entitled.

Before drafting the legislation to establish the employee wage protection program, my ministry consulted broadly with business, labour and non-profit groups. These consultations continued after the bill was before the House. Soon after the introduction of Bill 70 we began hearing concerns from various sources about the liability provisions outlined in the bill. We listened to those concerns and we acted to alleviate them.

During the deliberations of this committee I will be bringing forward motions to amend Bill 70 as it now stands. These amendments will remove the liability provisions for officers and will make the employee wage protection program generally consistent with existing liabilities outlined in the Ontario Business Corporations Act. We will also be exempting volunteer directors of not-for-profit corporations from any of the liability provisions of the employee wage protection program.

The amendments will also enhance the guarantees of a more efficient appeals process. While we want to be sure that the program pays out money only in cases where there are valid entitlements, we do not wish to tie up employers, directors or employees in lengthy and protracted appeals procedures. Once the employee wage protection program is operational, workers will be able to recover some, if not all, of the wages and vacation pay owed to them, along with the statutory severance and termination pay. The maximum for each claim has been set at \$5,000.

Funds to support the employee wage protection program will come from general government revenues. In order to access the program, workers who feel they are owed money by their employers will be required to contact the employment standards branch of my ministry and file a claim. Once the validity of the claim is determined, an order to pay will be issued against the employer. If the employer fails to pay and does not appeal the order, the claimant will then be reimbursed by the program. Where an employer appeals, the program will pay out after a

worker's entitlement to compensation is established. The employment standards branch will then take efforts to recover the money paid out from the employer or directors using the liability provisions of Bill 70.

With the amendments I will be introducing in committee, I feel strongly that Bill 70 represents a sound piece of legislation that will set standards for protecting workers' wages. As you are aware, my parliamentary assistant is a member of this committee. She will be briefing me regularly on your discussions and on any questions that may arise. In addition, my ministry staff will be present during your deliberations and will be available to answer your questions.

I once again urge you to make your report in a thorough and timely fashion, so that the workers of this province receive the protection they deserve. I want to thank you for the opportunity to make those few comments and, if I can, turn it over to the deputy minister for a few moments, as well.

Mr Thomson: My name is George Thomson, the Deputy Minister of Labour. My understanding is the committee wants someone to provide a general overview of the bill and that is what I am able to do at this time. I am prepared to do that right now or at a somewhat later time, at the committee's request. Do you wish me to proceed with that at this point?

Mr Offer: That would be quite helpful. It was in fact going to be one of my first questions.

The Vice-Chair: Are there any other comments? Then proceed, please.

Mr Thomson: We circulated, before the committee began sitting this afternoon, what we have been calling our internal working draft of the bill, which is a copy of the bill that incorporates amendments which would be proposed to the committee once the clause-by-clause stage of the proceedings is reached. We thought it would make sense to make that available to you so the discussion I now have and the overview will be easier to follow, because I can refer to a number of the amendments it is proposed would be made, subject, of course, to the committee's review of those proposals.

We have also prepared a short summary of the major elements of the amendments in this document that has also been circulated to members of the committee.

There are a number of amendments to the bill, as the minister has indicated, both to reflect the changes the government has announced it wishes to make to the bill, and also to respond to some of the feedback we have received as we have talked to various interest groups and individuals since the bill itself was introduced. As I say, the summary provides an overview of that. I should also tell you that any group or individual proposing to come to the committee this week who has contacted us has, on request, been given this so they would know what those proposed changes are, so when they come and speak to you this week they would have some sense of the changes that ultimately would be before the committee for its consideration.

I should say these are not necessarily the only amendments that would be proposed by the government. It would obviously also be dependent upon the results of the presentations of this committee and the views expressed by the

committee over the next period of time. There may other motions brought by the government in addition whatever motions are brought by the other two parties.

If I could take you in a very general way through the bill, I am using this document, the one that was handed out before the committee hearings that includes the proposed amendments for the purposes of the review. As the minister has pointed out, the purpose of the bill is to establish a wage protection program to protect employees should they be unable to collect wages, vacation pay, termination or severance owing to them by an employer; to also allow for some recovery of that money paid out, although the vast majority of the funds will come from consolidated revenue; and third, to establish a new appeal process for employees and to spell out the existing appeal process in the act to make the act more efficient in its workings—that is, the act as a whole, not just the act in relation to wage protection.

I can go through the bill in the order the bill has been presented.

Section 1 of the bill, which actually amends section 1 of the act itself, is simply a section that takes away the application of the Statutory Powers Procedure Act to some decisions made within the Employment Standards Act. These are the minor decisions made in some cases by employment standards officers, but primarily that is to deal with situations where there is an appeal process established in the act. That appeal process then takes over from the process established in the Statutory Powers Procedure Act, and that is what section 1 deals with. If you wish it, afterwards I can take you through the kinds of decisions involved.

Sections 2 and 3 of the bill: Those sections basically eliminate the present \$4,000 limit on the amount an employment standards officer can order to be paid. At the moment, even though more money is payable by an employer to the employee, the employment standards branch is limited in the amount that can be ordered to be paid, the employee then would have to seek from the employer any money above the \$4,000 amount. These sections and a couple of others later in the bill eliminate the present \$4,000 limit so the employment standards officer can order whatever amount is payable by the employer to the employee.

Section 4 is simply a section that allows the enforcement of settlements, and this is an amendment to the bill as a whole. If a settlement is entered into for the payment of severance pay—this is a settlement entered into by the union with the employer—this section would allow the employment standards branch to enforce the settlement if the settlement is not paid. In some cases the settlement can be for more than the act itself requires, and if the employer and the union have reached such a settlement, this introduces a section that would enable the employment standards branch to enforce the settlement using the terms of this act, using the procedures established in this act.

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Section 5 is perhaps the most important section in the bill that has been proposed. It proposes a number of amendments to section 40 of the Employment Standards Act, from 40b through to 40q, and this is the section that establishes the wage protection program.

The first section, 40b, basically, as you can see, establishes the wage protection program and sets out what the wage protection fund covers. The net effect of subsections 40b(2), (3), (4), (5) and (6) is that the wage protection program covers wages and vacation pay as agreed by the employer and employee, and then it covers severance and termination to the extent that is provided for by the act. So the wages and the vacation pay are as the employer and the employee have agreed; severance and termination are determined in the legislation itself. That is the difference between the extent of coverage for the different kinds of things an employee might be entitled to, and that is what 40b(2) sets out.

There will be an amendment proposed that would include commissions in the definition of wages, because when the bill was introduced we left out commissions, which for a number of people is the sole form of wage. We have allowed now for the possibility of access to the fund to cover commissions that are payable to an employee who has not been able to collect them from the employer. Otherwise that section basically remains the same as it now is.

Sections 40c and 40d basically allow for the appointment of a person to administer the wage protection program. It also allows for that person's powers to be delegated, because we have set up a regional structure in the ministry itself and it would allow the regional directors to take on responsibility for the program. It also provides civil protection for the program administrator so that those persons cannot be summonsed to be part of, for example, wrongful dismissal suits in the civil courts. That is to extend the kind of civil protection that now exists in the act.

Section 40e basically sets out when money is payable out of the fund, and the minister has already dealt with that in his opening remarks. The approach that has been proposed is one that would have the employment standards branch determine the amount that is payable, order the payment, then allow the normal process for collection to occur for a modest period of time, and then, if that is not successful, the payout from the fund. So it is not intended that the program be a program of first resort, but that it would be one that plugs in if the regular and normal enforcement process in the Employment Standards Act is not successful.

This section also sets out that if there has been an appeal, for example, by the employer challenging whether the money is payable, then the sum cannot be paid out of the fund until the appeal is over to determine whether the money is in fact owing. So the money cannot be paid out while the appeal is pending.

There is, however, later in the bill the power in the person hearing the appeal, when it is agreed that there is a certain amount owing, to order that amount to be payable, so that then there is the order that can trigger access to the fund even though the appeal is continuing. That only happens if there is agreement that there is a certain amount owing. There is the power to make an order to say, "Well, say that while we continue the appeal with respect to the rest of the amounts that are under dispute."

There could be a company that has closed and there is some debate over the entitlement of a number of employ-

ees but for the largest number of employees there is no debate about the amount that is payable. That is to enable them to get an order which triggers access to the wage protection program if that order is not successful. The Varsity case would be one where there was lots of debate about a number of the employees but no debate about a number of other employees. This would enable them to have access to the fund if you have, for example, a bankrupt employer while the appeal goes on with respect to the others.

Section 40f sets out a special process in the construction industry, because, as you will know, persons in the construction industry have access to construction liens. Section 40f is designed to ensure that employees continue to attempt to make use of the lien method of collection before they come to the fund, and they are expected to take steps to preserve the lien. As you know, there are time limits within which liens should be registered against property. This is to encourage that to be done, although there is an escape clause if for some reason it is explainable that someone was unable to preserve the lien. This is intended to place the fund behind the lien where possible, once again reflecting the view that this is an agency of, if not first resort, second resort.

Sections 40g and 40h deal with the issue of settlements again, and when there has been a settlement entered into, then the settlement is what is effective. This is to ensure that this act does not take away what now happens, which is often discussions between the union or the employees and the employer to reach some settlement of the claim under the act. When that settlement is entered into, that is what becomes enforceable, that becomes the amount that is looked to when one refers to the fund.

There is a provision in section 40h which would allow one to pay up to the total amount in the fund regardless of the settlement if the settlement is not complied with.

Section 40i is obviously an important section. It is the one that sets out the maximum amount that can be paid out of the fund for any one claim, and that is \$5,000, although the bill proposes a regulation-making power that could allow for that sum to be increased at a future date through regulation should it be determined that resources are available to pay to a higher ceiling.

There is a proposed amendment in section 40i which would make it clear that it is \$5,000 less whatever deductions need to take place. For example, there will be a flat 10% deduction on account of income tax in order to respond to the requirements of the Income Tax Act. So it is \$5,000 less whatever deductions are to be made.

Sections 40j and 40k set out more or less the payment process. It does allow for the deduction of taxes. You will see that there is a proposed amendment in subsection 40j(3) which allows the program administrator to deduct such amounts as are required to be deducted by a law of Canada or of Ontario. That would allow, for example, the deduction of income tax. There are also ongoing discussions with respect to whether, when and if unemployment insurance would ever need to be deducted. Those discussions with the federal government are not yet completed.

Section 40k is also the section that sets out the possibility of an interim payment to be made while an appeal is under way so that a referee who is hearing an appeal can order the moneys that are undisputed to be paid out through an interim order while the ongoing appeal is being heard.

Section 40L sets out the requirement that there be a delay if the employee appeals. One of the provisions of this act, and we are coming to that later, is the section that allows employees, for the first time, to appeal to an adjudicator, rather than the present bill, which allows them just to appeal to another employment standards officer. We have introduced the possibility of employee appeals, and this section is the one that says that money cannot be paid out of the program until that appeal is over with when the employee is, for example, disputing the amount that is to be paid.

Section 40m allows for a policy to be established with respect to overpayments. If, for example, more money is paid out of the fund or the program than is due, this allows a policy to be established to seek repayment of the excess amount. We are attempting to develop a policy on that, with the thought that there will be situations where the error, for example, is the result of administrative error in the program itself, and suggesting that the approach one might take to overpayments there would be different than overpayments as a result of incorrect information being provided to the program. We are still working on that policy. This would allow for a policy to be established on overpayments.

Section 40n sets out that if the program recovers from the employer more than the amount paid out of the fund, then that shall be paid to the employee. The employee may collect fairly early from the program and then, as we are coming to the employer, the program itself then tries to recover that money from the employer. When the program administrator seeks to recover from the employer, he or she tries to recover everything that is owing from the employer. So if more is recovered than the amount that was paid out by the program, then that simply is forwarded to the employee.

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Section 40o sets out the right of the program administrator to seek from the employer the money that has been paid out of the program. That is the section that basically subrogates the program administrator to the right of the employee to collect this money from the employer. So that is the second stage. After money has been paid out of the program, that is the section that allows the program to seek recovery from the employer.

It also allows the program administrator, if an amendment we are proposing is accepted, to accept an assignment of a judgement that may have been obtained from the employer. The program administrator could accept an assignment of that judgement and then seek to recover from the employer.

Section 40p allows for the possibility of interest to be collected on money that is owing. At the present time the act, unlike the case in a number of other areas, does not provide for any interest that is paid on money that is

owing, for example, by an employer, which is different from money owing in the workers' compensation area, the rules with respect to civil judgements against an employer. There has been some concern that that basically creates an incentive not to pay the funds as and when they are owing, so this section would allow for the accumulation of interest on the money that has in fact been determined to be owing. That is what that section covers.

Section 40q is really not a major section. It protects against the possibility of an employer or employee agreeing on an agreement to pay more to the employee in order to increase the claim against the fund and to do that solely for that purpose.

Section 40qa, which is an amendment that would be proposed to the committee, allows for the entry into agreements with the federal government relating to the payment of compensation from the wage protection program. This is because, as you will know, since this bill was introduced, the federal government has introduced as part of the amendments to the Bankruptcy Act amendments that would allow for the payment to employees of up to \$2,000 on bankruptcies to cover wages and vacation pay, up to a ceiling of \$2,000, an amount that could be funded by employers. There is an obvious need to harmonize the federal program with the provincial program, the federal program having been introduced since the provincial bill was brought in.

There are differences, of course, between the two programs. The wage protection program that has been established by the province covers situations that go beyond bankruptcies, and a number of the situations we are dealing with were not necessarily dealing with bankruptcies. We may be dealing with layoffs or closures of a certain size, we may be dealing with a company that has moved to another jurisdiction, but not dealing with bankruptcies. Second, the wage protection program as proposed in this bill covers severance and termination pay while the federal bill only covers wages and vacation pay.

However, it is the view of the province, and I think shared by the federal government, that the primary responsibility for the first \$2,000 ought to be with the federal government as part of its bankruptcy legislation, so it is taking a consistent approach with every province, including those that will not have a fund such as is proposed in this bill.

We have begun discussions with the federal government on how we might harmonize the two programs. Those discussions are ongoing. There is agreement that we need to come up, if we can, with an approach that has employers go to one place and have one processing of claim. It needs to be a speedy process. It needs to be, in our view, one that would have the federal government primarily liable for that first \$2,000 with the province dealing with the excess.

The thing that is not resolved is how you best accomplish that, and we have had discussions as recently as this morning with the federal government and there will be ongoing meetings. In fact, we are attempting to develop a method of bringing in people from the private sector, particularly those who work in bankruptcy situations, to take

out what is the best way of making this work in situations where both funds are potentially relevant to the employee's claim. It is our hope that in the next month or so we will have an answer. That may require the entry into an agreement with the federal government, and that is why section 40qa is there and will be proposed, to enable that agreement to be entered into.

That is the end of section 5.

Section 6 deals with directors' liability, previously officers' and directors' liability. There are a number of proposed amendments in this part of the bill, as the minister has already indicated, the general objective being one of removing officers. That requires a lot of amendments. The officers are mentioned in a number of the sections and that means the number of amendments is pretty large; also, a number of amendments designed to neuter the liability that now exists for directors in the Ontario Business Corporations Act, rather than the broader liability that exists in the draft bill before these amendments are made. So the bulk of these amendments relate to those two issues.

Section 40r is an important section, primarily for what is now proposed to be taken out of that section, because that is the section that would limit directors to directors as defined in the Business Corporations Act, to make it clear that this section on recovery from directors does not apply to not-for-profit corporations, both federal and provincial not-for-profit corporations, and to remove the reference that was previously in the bill to officers. So that section is really important for what is being taken out of the section more than what is being added.

Section 40s is also, I think, an important section and this is the one that establishes what it is directors could be liable for. It points out, as the Business Corporations Act does as well, that directors would only be liable for wages and vacation pay, not for termination and severance. It is wages and vacation pay in the way it is set out in the BCA, and that is six months' wages and up to one year of vacation pay, provided that money was payable while the person was a director. If the money became payable after the person ceased to be a director, then he would not be liable for the money, and it ties into services performed for the corporation, which would include work done for wages, commissions and so on.

It does allow for the recovery of interest, once again, with respect to directors' obligations. The subsection that sets out the limit of the directors' liability is subsection 40s(8), which is another page over. That is a new amendment that would be proposed to the committee that sets out the directors' maximum liability. That is the one that comes from, in essence, the Business Corporations Act.

There is also a proposed new subsection 40s(10), which would allow and make it clear, to the extent that the present bill does not, that any director who satisfies a claim for wages has a claim against any other directors, so it is a joint and several liability between the directors.

Section 40t deals with settlements again, to limit the directors' liability to the settlement, unless it is a settlement that has been entered into in an attempt, with the director's knowledge, to avoid liability under the act. In

essence, it is to deal with the settlements issue again; not, I think, a major provision.

Section 40u is the section that sets out the power to make an order against a director and also allows for the director to appeal the order. This is the section that not only allows the order to be made but gives the director the right to seek an appeal on the grounds either that the money is not owing or that he or she is not or was not a director at the relevant time the money became owing. So section 40u really sets out the overall appeal right.

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I should point out that at the end of 40u, to be very clear, there is a little subsection (8) that makes it clear that nothing in that section that deals with appeal and the power to make an order against a director is designed to make the director liable for anything more than is set out earlier in the act, ie, just wages and vacation pay.

Section 40v is a separate section that allows for orders to be made against directors who are left out the first time around. Suppose there is a process that is begun against the directors who can be located at the time it is determined that the employer is unable to pay and process should be begun against some directors. If afterwards other directors appear and there has already been the time for appeal, this allows for a separate order against those directors, giving them a separate right of appeal. They do not lose their right of appeal if they are later subject to an order when they show up or are located for the purposes of an order under the section.

Section 40w is at the top there. It is a little hard to tell it is there because the number is crossed out, because the main change in 40w relates to what has been taken out rather than what is in there. That is the amendment that takes out the earlier section, if this amendment is adopted, that would have made directors liable for a period of time after they ceased to be directors. That is the subsection that somehow inadvertently had the effect of making directors liable for severance and termination in situations where they would not be under the Business Corporations Act because they would be gone or would no longer be directors at the time the severance and termination was payable. By taking out the subsection that makes directors responsible for a year after they cease to be directors, that takes away any risk of an added obligation upon directors in this bill, beyond that which exists in the Business Corporations Act.

Section 40w also sets out a two-year limitation period. That is a limitation period that is somewhat longer than the one that is in the Ontario Business Corporations Act. It is the same one that is in the federal Corporations Act. It is the standard two-year limitation period that exists in the Employment Standards Act as a whole.

Section 40x deals with service and the power to make substitutional service orders.

Section 40y takes the existing enforcement section, liability section, that exists in the Employment Standards Act, which makes a person who does not comply with an order made under this act liable to a fine and applies that to this situation as well. It is a section that is also found elsewhere in

the act, although the penalty is more extensive in the other part of the act. Here it is limited to the possibility of a fine.

Section 40z basically says that a corporation cannot develop bylaws or other provisions to try to override the obligation under this act. It also, though, allows for a director to be indemnified against his or her obligation under the act, which allows for the possibility of a corporation to acquire insurance to protect the director who comes on to the board of directors and wishes to be protected against this potential liability.

I would say the bill itself sets out that the primary obligation is upon the employer and would allow any director who is subject to an obligation to recover against the employer. It assumes—and we will be developing policies that will reflect this—that the effort to recover would be an effort that is against the employer, and only when that is unsuccessful would one look to see whether recovery should be sought for some small portion of the money owing from the directors.

It does not say that one must have exhausted all attempts to recover from the corporation and the employer, simply because there will be situations where it will be clear that that is process for the sake of it because there are no assets available at all. The policy will be one that will seek recovery from the employer. The act establishes that the employer is primarily liable. The directors stand behind that and are liable only, in terms of practice, if it is not possible to collect from the employer.

I will come back to section 7 later because it is really dealt with later. That just allows for the creation of an adjudicator to hear appeals from employees.

Section 8 amends the present act. The present act allows for the payment of an extra 10% of an order, that would require an employer to pay an additional 10% in addition to that amount owing. We proposed an amendment that makes it clear that this is added on as an administration cost, not as a penalty, the way it is presently described in the act. Other than that, though, it does not change the present law.

Section 8 also makes it clear that if the employer does not appeal the order within the time period, but there is process that takes place with respect to the directors, then the employer owes the money and the process is over with respect to the employer while any steps are being taken with respect to the directors. That is subsection (7) there, which points out that if an employer fails to apply for a review, the order is final and binding against the employer even though there might be process continuing.

Section 9 is the section that sets up the employee appeals process. This is the new appeal process for employees to replace the present administrative appeal that simply allows an employee to be heard by another employment standards officer if he or she feels that the amount that has been determined to be owing is not the correct amount or has some other reason to be unhappy with the performance of the employment standards branch.

Section 10 alters the appeal process. There are two appeal processes set out in the Employment Standards Act, one contained in section 50, the other contained in section

51, but they are two separate methods by which the employer's obligation might be reviewed or appealed.

Sections 10 and 11 really alter that appeal process three or four ways. The main objective here is to try to speed up a faster appeal process than the one that now exists. A complaint that is often lodged against the employment standards branch is that we are not processing appeals as quickly as one ought to and there are not enough time limits to ensure that appeals are heard and resolved as quickly as possible. These sections speed up the process by saying that appeals should be first heard within 45 days of the initiation of the appeal. We are going to be proposing an amendment that suggests they ought to be completed in 45 days unless there are special reasons to extend the time period. That is to put pressure on the employment standards branch and those who hear these appeals to get the job done in an expeditious way, unless there is some special reason for extending the time.

One reason that has been raised with us for extending the time might be, for example, if there is a process involving a director and the director requires additional time in order to gather information for the purposes of the appeal. So there is a power to extend the time in this section. It requires those who are appealing to at least disclose the reasons for their appeal, which is not required at this point in time, and once again allows for those interim orders to be talked about where there is an undisputed amount owing.

Section 12 allows for recovery from third parties where there is money owing by third parties to the employer from the director.

Sections 13 and 14 deal with issues of enforcement and think they are fairly minor sections.

Section 15 is the section that sets out the regulation making power that it is proposed be added as a result of this bill. It includes five things: one for the power to prescribe payments or wages, because of the concern that there may be things that are paid or different methods of payment that ought to be included in the future to ensure that wages are protected by the fund; one that allows us to set a policy on overpayment; one that allows us to establish an interest policy; one that provides for the consolidation of hearings, when you may have both the employer and the director appealing, for example, and providing for a manner of apportioning compensation when one pays out the money—in other words, how much is for wages, how much is vacation pay, how much is severance, how much is termination; and last, the regulation power allowing the total amount payable out of the fund to be increased should it be decided to go above the \$5,000 figure.

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Finally, section 16 is the transition section. As you will know, the intention is to make the right to claim against the program retroactive to last October 1 so that any employer who was deemed to have been terminated on October 1 afterwards is entitled to claim against the program. However, from October 1 through to whenever this becomes law that \$4,000 ceiling that now exists in the act will remain, so there will not be any retroactive power to claim more than now exists in the act against employers through the employment standards program, because that would

sense be altering the power to collect from employers retroactively if we did that, so the \$4,000 limit is prospective; it does not backdate to October 1. Apart from that, the employment protection program would be available to all those who had been laid off or terminated from October 1 on.

When I say the \$4,000 limit, that is the amount that can be ordered against the employer. Those persons will still be able to get up to \$5,000 from the program. It is just that the section that allows employment standards officers to order employers to pay money that now exists in the act and limits that to \$4,000 would have to apply up to the time when this became law. It would not, though, reduce the amount that employees can claim from the program.

Last, I would point out that it was announced when the bill was introduced that in the construction industry it would be possible to make a claim against the program relating to at least some of the benefits as well as wages. That is because the method of compensation in the construction industry is one that blends the two together. We cannot easily separate the two and that is why we proposed there would be the broader protection in that area in terms of claims against the fund. That would be dealt with by regulation.

That is an overview of the bill as it presently stands, trying to incorporate as well the amendments that would be proposed.

Mr Offer: I have a series of questions that I would like to get some further clarification on. I do not know now it is that you wish to proceed in the time which is available to us, whether by rotation or whatever. However, we will just go on and ask some questions.

First, I would like to thank you very much for the presentation in so far as you have provided some of the background information and certainly an overview of the process which is driving the legislation.

The question I have first is that it has been referred to today more than once that it is viewed that this agency be one of last resort. I am wondering if you might be able to expand on that particular clause.

Mr Thomson: The intention is to try to have expeditious payment but not to have all employees who are owed money by their employers come to the wage protection program first and then simply leave the whole collection of moneys owing from employers to the government to do. A large number of claims are dealt with and resolved between employee and employer. The employment standards branch can function as a mediator, but the goal is to try to keep that process working so as much as possible people simply collect from their employer and it is only when they do not that the fund becomes operative. It is dealt with in the act by giving some discretion to the program administrator to determine when the money is payable, and the policy would be one of expecting employees to take some steps to try to recover the money.

At the same time, we do not want to make that a process that delays unduly the payment of money that is required and needed by employees, so there is a discretion to pay it out even though there may still be steps that the

employee could take, and now the program could take, to try to collect it from the employer.

Mr Offer: Thank you very much. I am going to try to be very specific. In the minister's opening statement, he talks about 15,000 potential claims. He talks about the list growing each and every day. The question is that we are in the main dealing with businesses which have gone bankrupt. There is no other resort. Is it not the intention of this legislation that those workers are going to be coming to the employment standards branch saying that this is owed to them as a result of wages, this is owed to them as a result of vacation pay, this is owed to them as a result of termination pay, and this is owed to them as a result of severance pay, and, "I would like the money"? Is that not what it is? There is no last resort. They are coming first off. I think it is important, certainly from my perspective, that I know, and certainly that the world outside this place knows, that the workers, 15,000—and the lineup is growing longer, by the minister's own words, each and every day—are going to come to this branch program first. I would just like to get—

Hon Mr Mackenzie: They basically are people who are entitled to the money. It is money that they are owed, that they have earned. How they approach it, I guess, is not that important to me, but most people will make an application. In some cases, it will be resolved without having to take any further action on it.

Mr Offer: So probably, as far as many of the workers are concerned, involved in bankruptcies and what not, it is not going to be viewed as one of last resort. But I would like to ask, if I might, a second question, and that is the interrelationship between the provincial and federal program. I am not very much aware of this federal program, except that it is \$2,000 for wages, and I do very much appreciate being given that information, but we are talking about the same worker. We are talking about the same business going bankrupt. Where was it anticipated that the person goes? It is the same person. It is the same business.

Hon Mr Mackenzie: We have had some specific discussions on this, but I will let the deputy answer that first, and then I have a comment.

Mr Thomson: If I could just make one point about the previous question, our best estimate at this point is that about 66% of the cases of employees coming and seeking money under the Employment Standards Act relate to bankruptcies or receiverships. The rest relate to situations where there are companies, or related companies, that still are in existence. We are a little unsure of that. We are still working on what the percentage is, but somewhere in around that.

In answer to the second question, it partly becomes one of saying what we think ought to be the answer, subject to further discussions with the federal government. Since it is our program that would be the top-up, the extra, it would seem to us it makes sense to try to set up a process whereby the employee would come to us. We would do all the work to process the claim, and then the federal government would compensate us for that portion for which it is liable. In other words, we could do the whole calculation,

we could pay out the money, and then the federal government could reimburse the provincial government for that part of it that relates to its Bankruptcy Act.

They have raised with us the possibility of us using receivers in bankruptcy situations to possibly get the money out even faster from a receiver, and maybe that is a way to get the first \$2,000 out very quickly, while we are verifying the claim. The thing that can hold up a claim usually is the part relating to severance and termination and trying to verify that. They do not want to have their payment held up while there is still calculation being done on the amount of severance and termination owing, so they want to talk about that further to make sure that would be a fast enough process. But at this point we think it makes most sense to have the employee come to us because we are the ones who would be doing the top-up part, the extra amount above the \$2,000, so the one paying the largest amount should be the one the employee comes to, with reimbursement coming from the federal government. That is the position we have been taking.

Mr Offer: What are the feds saying about it?

Mr Thomson: We had one meeting with them where we came away somewhat concerned about whether they shared that view, although I spoke today with the assistant deputy minister responsible for this at the federal level, who is eager to have a sit-down and find a one-stop shopping model, recognizing we still have some work to do.

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Mr Offer: To carry on with that response, it would be that the employee would come to the branch, prove his or her claim, and in the event that there is no review, get the money and then the province would go to the federal government to ostensibly collect up to \$2,000 of the money. The question I have is, if that is the case, can you give me a breakdown as to what figures we are looking at? When somebody comes to the employment standards branch under this legislation he is going to be primarily saying, "This is what is due and owing to me: my wages, my vacation pay, my termination pay and my severance pay." They will be proving those particular things. My understanding is that under the federal program they could only get the wages and vacation up to \$2,000. According to your statistics, what is the breakdown of the average amount a worker in an average situation would be owed in terms of wages and vacation pay? I am asking you. There have to be some figures we are working on.

Mr Thomson: I think we can give you an average figure. I do not have it right here in front of me. We did develop an average claim that we thought would represent all four under our program, and that average claim was around \$4,200. But that is wages, vacation pay, severance and termination for the average claim. What portion of that is wages and vacation pay in the average case I do not know at this point, but I think I can get you an estimate of that. It would be, in the average case, I think, considerably less than \$2,000.

Mr Offer: I appreciate being given that information; I think that is going to be quite useful. In the event this particular legislation is passed, as proposed and further

amended, and in the event the federal legislation is passed as proposed, and, third, if your discussions between the province and the federal government work out as you hope, then an employee will come before the province before the board, asking for wages, vacation pay, termination and severance, and that will be determined, and most likely the wages and vacation pay will be something under \$2,000. You then will be able to claim over, you hope, the federal government, and in fact the wages and vacation pay, the hallmark of this legislation, will be paid for by the federal government, which will have received the money by a head tax on employees.

I see some of the officials shaking their heads. Tell me why not.

Mr Thomson: I will try and then I will ask for advice.

Mr Offer: If it is under \$2,000, it has to be—

Mr Thomson: The only difference would be, first of all, it is only 66% of the cases. For the rest we will be on the hook for both wages and vacation pay, not the federal government, unless it is bankruptcy. In other words, most cases where it is not a bankruptcy or a receivership it will be the province that is paying, with no recovery from the federal government.

Second, the largest amount of the liability, in most cases, will be for severance and termination. That is where we would be fully responsible up to the ceiling.

Mr Offer: Okay. I appreciate that, and I recognize that the distinction is really on the basis of the provincial program dealing with bankruptcies and insolvencies and layoffs, whereas the federal program deals basically with bankruptcies. But even using your figures in a conservative estimate—small-c conservative—there is no question that a very large portion of this particular bill with respect to the wages and vacation pay may—I am not saying "will"—be funded through the federal program which receives its money through an employee type of tax. I am trying to put that as fairly as possible.

Hon Mr Mackenzie: Just before you leave that, the one thing I wanted to say is that we have the figures, I am sure that we can come up with very shortly. But the amount that would be covered by the federal plan is by far the smallest part of the money that would be available to use. It is not a huge amount that is covered by the federal plan.

Mr Thomson: To say it another way, the work we have done on the claims to date suggests that about 90% of the money owing is for severance and termination pay, so the largest amount paid out of the wage protection program will be to assist employees who are not getting severance and termination pay. The wages and vacation pay represent only 10%, but it is true the majority of that would be reimbursed by the federal government.

Hon Mr Mackenzie: The other thing that should be made clear is that we were encouraged in the conversations this morning with the federal authorities, but you will know, as many people in this room will, that there have been at least seven or eight major commitments over the years. I forget how many years now, but it is a lot of years, to move in this area, and there is still no indication that it will

ready even within a year's time federally. So we are looking at a bit of a nebulous potential payout.

Mr Offer: Okay, I thank you very much for those remarks. I recognize what you are saying, but I also recognize that we are also dealing with some federal legislation, which is how it works.

Hon Mr Mackenzie: We are happy with what we hear, even this morning. Everything we get is certainly a win.

Mr Offer: I want to carry on with that last response, the deputy I believe, dealing with the vast majority in terms of dollars being paid on account of severance and termination pay. In this respect, I am somewhat curious over the interrelationship between subsection 40b(2) and subsection 40s(1). Basically, subsection 40b(2) talks about that the program is responsible for and section 40s(1) talks about what the directors are responsible for. Help me out on this, because there is a curious difference. My reading of this is that the program is responsible for wages, vacation pay, termination pay and severance pay. You have noted that of those four, it is probably anticipated that severance and termination pay will constitute a big dollar figure.

Section 40s(1) states what it is that the directors will be potentially liable for on a joint and several basis, which is the wages and vacation pay. I believe there is probably some sort of figure that you have dealing with the possibility of successfully recouping wages and vacation pay from directors. But putting all that aside, it means the taxpayers will be footing the bill for the severance and termination pay of potentially every worker in this province.

I am wondering if you can share with me whether, first, that is a correct reading and, second, on the basis of the minister's opening statement talking about workers recovering unpaid wages when their employer is bankrupt, that you are going far beyond the principle you had initially pronounced.

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Mr Thomson: There will not be recovery from directors for anything other than wages and vacation pay. It is true that is the smallest amount of the total amount owing, but you take the total liability of the program. So to that extent you are right, we will not be going beyond that which the Business Corporations Act now makes directors responsible for, just wages and vacation pay.

We are hopeful, however, that we will be successful in our efforts to recover from as many employers as possible at severance and termination pay. In other words, we will still be going after employers wherever we can and, as I pointed out, somewhere between 30% and 40% of them are not bankrupt. We have been more active recently in trying to go after related companies, two companies that have in fact gone bankrupt, and we have some optimism that we can collect a fair amount from employers. But to the extent that we cannot collect from employers severance and termination pay, we also cannot collect it from the directors, and that would be money paid directly out of the fund, out of the program, up to the ceiling of \$5,000 per employee.

Mr Offer: The response seems to just lend to the way I read this legislation. I would ask the minister, based on your opening comments, if the principle behind the bill is to help workers recover unpaid wages when their employer is bankrupt, insolvent or does not pay because of other circumstances, do you not feel, on the basis of an interrelationship between the two sets to which I have previously referred, that the principle of the bill is much wider?

Hon Mr Mackenzie: I think the difference is that their determination of wages is much broader than what we are using, and we have included in that termination and severance pay. There are usually contractual obligations. It is money that is actually owed, in any event, to the workers before they can claim it, and it has certainly been part of our interpretation.

Mr Offer: To carry forward, you feel there is in principle nothing that is wrong with—because it is coming out of the consolidated revenue fund—

Hon Mr Mackenzie: I have no difficulty with it if it is actually money owed to the workers, no.

Mr Offer: There is nothing wrong with taxpayers paying for that?

Hon Mr Mackenzie: No.

Mr Offer: Can we, on that basis, ask the question whether businesses in general should pay? I am talking about a levy, a tax imposed on businesses; potentially, the good businesses paying for the bad businesses, the good employers paying for the bad employers. Do you see something improper about foisting a potential tax, if not on the taxpayers generally, on businesses specifically, in the area of severance and termination pay?

Hon Mr Mackenzie: Certainly no more than I see its being improper that a worker who has earned that money and, through no fault of his own, all of a sudden finds that he is not entitled or cannot get it because of the situation of the company.

Mr Offer: So you would then view this particular program as a social program?

Hon Mr Mackenzie: I think anything that assists workers or others in society probably has a socialist element to it, if that is the interpretation you want to give it. I do not see it particularly as a socialist program.

Mr Offer: I did not say "socialist," I said "social."

Interjection: You said "social" as well.

Mr Offer: Okay, I will leave it at that, then.

The Vice-Chair: I am sorry, I do not want to cut you off, but I wanted to make sure everyone had an opportunity. If there is anyone who wanted to jump in now—

Mr Offer: I have some other questions I would like to ask and if there is anyone else who would like to—

The Vice-Chair: All I would like to do is just offer an opportunity or we will—

Mr Offer: Sure, I would certainly stand down for a few moments and let whoever else wishes to ask some questions.

Mrs Witmer: To Mr Mackenzie or Mr Thomson, is this fund, this program, going to be accessed as it is in Manitoba, only as an absolute last resort after all reasonable efforts to recover wages have been made, or how is this different?

Mr Thomson: We have attempted to find a balance between an approach that would just pay the money out of the program right at the beginning on the one hand, and on the other hand waiting until all processes, all possible procedures an employee could take against an employer, have been exhausted. Neither one of those seems to us to make sense. To pay the money out of the fund immediately would mean the fund or the program would be doing all the collecting and employees would not be asked to do what they ought to do when they are owed money, to the extent that they are able to do it.

On the other hand, if we make them exhaust all remedies to collect the money, then there is a real risk they will not get the money owing to them at the time they most need it, when they are trying to make the transition from one job to another. You might say, following on something Mr Offer said, this program does achieve a social purpose to the extent that it assists an employee through a very difficult period of time by ensuring that he or she gets at least a portion of the statutory entitlement as he or she is trying to move on to a new job, or to be retrained or whatever.

What we have done is try to strike a middle ground that says, "You're expected to attempt to recover, but there is a discretion to pay out before you have exhausted all remedies," and pay out of the program so that employees are not sitting there for ever waiting for the money from the program or from the employer.

Our thought was that we would do what we more or less do now, which is to ask the employee to deal with the employer, seek the money, have the employment standards officers work with the employer, if there is an employer to work with, to collect the money and to do that for a very modest period of time. The first three or four weeks, for example, are very important, and at that point allow an application to the program even though there may be more things that could be done to collect the money. Then it would be the responsibility of the program, with the employee, ideally, to still try to collect from the employer to be reimbursed.

Hon Mr Mackenzie: I do not know what you get in your constituency office, Mrs Witmer, but I know that in mine, over the number of years we were dealing with workers' problems and other problems, for the vast majority who came to me after they had made their efforts to collect where they were owed money in terms of their employment problems, we were usually dealing with it not only two or three weeks, but in some cases two or three months after the fact. I am not sure what is actually going to happen in hard practice, but I suspect most workers will make an effort to collect when they find they are out and are either missing a couple of weeks' vacation or pay or are entitled to six, eight or ten weeks' severance and have not got it.

I do not know whether you could call it a last resort effort or not. I would not really get too upset about it and do not see it necessarily as a last resort effort.

Mrs Witmer: I guess the point I am trying to make, and I would certainly agree with you is that those first three or four weeks become very critical to the employee and the employee's family, and some of them have to go on other avenues to get money to carry on. I guess my concern is that every attempt possible will be made to collect from the employer so that the taxpayers of this province are not again forced to subsidize what Mr Offer has referred to as a social program. I hope this does not become a second resort and that we never go beyond that. I hope every attempt is made to recover from the employer if at all possible, and I think we need to give a lot of thought to making sure that process does take place, that all reasonable efforts are made to recover those wages. I am concerned about that.

The other concern I have at the present time is not knowing what the federal government is going to be doing. I am glad the discussions are ongoing and that there is hopefully going to be some harmonization. What guarantee, though, is there that the federal government is going to reimburse the provincial government for the administrative costs? I hear you saying we are going to do the work and recover from the feds. Are we also going to be recovering money to cover the administrative costs that we are going to be incurring beyond what needs to be collected?

Mr Thomson: It is too early to answer that question because the discussions are still at a relatively early stage. It is our hope that if we become the place one goes to have the whole claim processed, some form of the administrative costs will be covered by the federal government. We have not gotten to that because we have yet to agree on what the process would be. We have real optimism that if the federal government agrees that it is primarily liable for wages and vacation pay right up to the \$2,000 in bankruptcy, because it would have to take the same position with every province whether or not that province has a wage protection program. We have heard nothing to suggest they would feel otherwise, but we still have not got to the stage of determining whether they are going to help us with the administrative costs if we process their claims.

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Hon Mr Mackenzie: I think it is worth noting that one of the very first meetings we had, the idea of harmonizing our approach was one that also came from the federal people we met with, and we agreed with it. We got some conflicting stories thereafter as to whether they wanted a second approach to collect the money, and we see some real difficulties with that. We were once again this morning, when the deputy was speaking to the federal people, a little more encouraged that there was not to be two separate efforts, but it is an issue we just have not been able as yet to resolve. We recognize the importance of it and we will do what we can, because it makes sense to us. Obviously, it means bearing some of the cost, and that would be important to us as well if we can access the federal Parliament.

Mrs Witmer: In all fairness to the taxpayers in Ontario, if Ottawa is going to introduce this fund and we are the ones it is coming to do the administrative work, the taxpayer in Alberta is not going to have to pay that additional money, so obviously we are going to have to get some sort of reimbursement.

Hon Mr Mackenzie: The difficulty in making arrangements with other provinces is that if they are not able to work out, I am not going to be absolute on that until I see what the final results are.

Mrs Witmer: That is right. I would hope, then, we would try to be reimbursed for those administrative costs.

What if an employee has been receiving unemployment insurance and now receives a payment from this fund? What is going to happen? Is the employee going to have to pay back the money?

Mr Thomson: You have raised an issue of some real importance that is still not fully resolved, particularly with respect to severance pay. At this point, the federal government's position with respect to unemployment insurance is that if one receives severance pay, that is offset against an unemployment insurance obligation or payout, so even if you get it after you receive the unemployment insurance it can claim it back from you, or if you get it while you are collecting unemployment insurance you can be terminated from unemployment insurance.

As you may know, this is a practice that has been very strongly criticized, and there are a number of reports that propose it be changed. We do not yet have an indication that the federal government will do that. We are hoping to achieve some positive answer to that before this program is operative.

Hon Mr Mackenzie: We are also hoping we will have a clear indication of whether we can amalgamate the two plans before ours is in place. As I mentioned earlier in response to Mr Offer, we have been raising the issue—I am aware of it since 1976-77—of the federal responsibility in terms of bankruptcy situations. We have had at least even starts on it or what we thought were starts, so it is a question of wanting to have something pretty firm before I would want to hold up what we are doing.

Mr Thomson: It is our hope to be able to report to the legislature what has been worked out with the federal government before this bill is brought forward for third reading. We are assuming we can develop some understanding with the federal government before then on this issue, although its bill may not pass for some time.

Mrs Witmer: It certainly would be beneficial to everyone in the province if the federal legislation were to be passed at the same time and we knew exactly what the real costs of the program were going to be to the people in Ontario.

Another concern I have is about the ability to increase the amount of compensation and the method by which that can be done. Has there been any consideration given to changing that?

Hon Mr Mackenzie: We have left it so that it can be done by regulation. That would depend to a large extent, I think, on the economic circumstances and whether the em-

ployment situation improves drastically, whether we find that the costs are not as high as we anticipate for this plan. Those and probably other arguments would enter into it. We just wanted the ability to be able to move if the circumstances indicated we could pay more to workers. I might say that the \$5,000 covers most of what is owed to the vast majority of workers in the first place.

Mrs Witmer: That is right. I think you said the average claim is going to be about \$4,200, so that would be covered. One other concern I have, certainly one that is raised by people throughout the province, is the fact that eventually this will become another tax on the employer.

Hon Mr Mackenzie: I must confess I was surprised and indicated it to the federal minister when we talked to him about its move to have a federal payroll tax for its part of it, but our intent is that we deal with it under general revenue for the first try. We will wait to hear what arguments we get from the Treasurer before we take another look at it. That is always a difficult anticipation.

Mrs Witmer: When you say first try, are you referring to the first 18 months?

Hon Mr Mackenzie: I am referring to the first 18 months. That is the only firm commitment we made on it.

Mrs Witmer: After that it is certainly a possibility. You are going to review the situation?

Hon Mr Mackenzie: We have indicated to the Treasurer that we would like to discuss it with him. He has not given us a hell of a lot of encouragement, so it may stay the way it is; it may not. I cannot tell you that for sure.

Mr Thomson: At this point there are no plans to introduce such a tax or levy.

Mr Klopp: It has been an interesting time for me, this whole idea about a wage protection act. I come from an agricultural background and we have somewhat the same ideas in agriculture. A farmer goes and processes something and takes it to an elevator, and if the elevator goes broke the farmer is the last one holding the bag. In this case, it is usually eight or nine months' work down the drain. Ironically, sometimes it is the same bank after him for his money that foreclosed on the elevator.

Government's answer to that a number of years ago was to put in a kind of fund. I guess I pay a little of my money from my crop. One of the arguments we had was that it may be paying people to get out of the industry and not feel so bad because they ripped off the farmer. I congratulate you that you have recognized this a little for the employee.

Some of my questions have been answered very well. In my riding, one of the concerns was how it was with the owners and the commissioners. I commend you, because we had some quite frank discussions in my office and I think you have answered them fairly well. My employers were concerned about their families and how it was going to relate to them; it is now out. I gave them the opportunity to submit written submissions and come here. They said no. Really, how can you argue against a wage protection plan? It only makes sense.

One of the arguments we have heard is that the \$5,000 is too high. After what we have heard today, we have batted around \$4,200—is that correct? I can take that back?—as about average, so it is not overly high, and indeed it might probably not reach that.

Hon Mr Mackenzie: It is worth recognizing at the same time that if somebody is entitled to close to the maximum severance pay and did not get notice of termination, we have had figures as high as \$15,000 or \$20,000, so somebody could be out a pile of money—fortunately, it is a small percentage of the cases—and the \$5,000 does not begin to cover what he might legitimately be owed.

Mr Klopp: I thank you very much for that point. I think it is a good start. In agriculture, we have had somewhat the same thing. Indeed, general revenues have had to make up the shortfalls in some of those programs. We are in tough times right now, and in most of these times with the plans we put forth in agriculture there was a big pile of money being owed. It is interesting to note that most of those funds are actually in pretty good shape right now. Maybe down the road this thing will not be as big a bugaboo as it is right now. I would hope that down the road we get back into some better times and things will even out.

Hon Mr Mackenzie: We have some hopes in terms of the cost. When we looked at the costs and came as close as we could to them, the 18 months and \$175 million—that was the first figure in this—was a worst-case scenario situation. Hopefully, if we have started to improve things, those costs will be in a downward spiral. I just do not want to make any predictions until we see what has happened in a few more months.

1540

Mr Frankford: Section 12, on section 52 of the act: Do I understand this to mean that if it appears a company is getting into trouble, the director could ask for payment of our funds?

Mr Thomson: This is to deal with a situation where you have made an order against a company or a director that has not been collected. You would still have to have made that order, and then it turns out there is a third party who owes money to the company, for example. This would allow the director to seek to recover from the third party who owes the money to the company, in order to satisfy the order that has been made against the company. It would not become operative until an order had been made, a determination made that either the company or the director is liable for a sum of money.

Mr Frankford: So the company would have gone into bankruptcy before this took place.

Mr Thomson: Yes. You would have had the layoff or closure or whatever it would be. You would have had a determination that money is owed to the employees, an order that the employer pay it, and an attempt to recover that from the employer. But suppose the employer has gone bankrupt and you find somebody who owes money to that employer. Assuming there are not some secured creditors ahead of you, that would be a situation where one could go after that money.

Hon Mr Mackenzie: It is an incentive for officers and directors to collect what they can in the case of a bankruptcy situation and not give up.

Mr Frankford: You said secured creditors. Does this make you the first creditor?

Mr Thomson: No. There is nothing in the bill that would have the program that has paid out money to an employee stand ahead of other creditors. The right of the program would be no greater than the right of the employees, and the employees, as you know, stand behind the secured creditors, for example. We do not have the power at the provincial level to alter the order of creditors in a bankruptcy. That is federal legislation, and they have not altered the order of the creditors.

That is a long way of saying the program administrator has no greater right than the employees have to recover but this would allow, in going after the company, to go after a third party who owed money to the company that might be money that would otherwise have been available to the employees, and therefore in this situation is available to the fund.

Hon Mr Mackenzie: It raises another whole question that has been there for a long time, whether there should be changes in who are preferred creditors, but that is another battle that is down the road somewhere.

Mr Frankford: I am still not quite clear what this paragraph does, why it does not make you the preferred creditor if you have the right to go after an individual.

Mr Thomson: The law relating to bankruptcy is federal law and the province does not have the right to change that law. It would have to be done federally. If someone were going to stand ahead of secured creditors, for example, it would have to be a federal law that would do that, a federal law relating to bankruptcy. You have to follow whatever the federal law is with respect to liability on bankruptcies. We would not have the power to say the fund should get paid before the secured creditors. Only the federal government could do that on a bankruptcy.

Hon Mr Mackenzie: But certainly if there were money owed the company—and officers and directors would be conscious of that—they could make an extra effort to collect it.

Ms S. Murdock: I just have one question. Under section 40u, if two directors ask for a review within the 15-day period but the other directors do not, would that have any effect on any pending appeal?

Mr Thomson: No. If anybody has been served with an order and does not appeal within the time period, the order becomes final against those persons—

Ms S. Murdock: Against the other ones.

Mr Thomson: Against the other ones, but those who are appealing, whoever they are and however many they are, an employer and maybe a number of directors, all of those would not be liable unless and until the appeal determined they were liable. Am I answering your question?

Ms S. Murdock: I think at the beginning, under section 40e—I was just wondering, when I read 40u in relation to 40e, whether or not any of the funds would be held

pending appeal if all of the directors were not affected. Do you see what I mean?

Mr Thomson: Yes, I understand the question. I am sure I know the answer. You are raising the question of a situation where you have some directors you can collect against and where it is a final order. Let's suppose you have taken steps to collect, successfully or otherwise. Can you pay out the money even though there are appeals pending launched by other directors or by the company? I will have to get back to you with the answer to that. I do not know the answer to that.

Ms S. Murdock: You mentioned in your presentation that under section 1, some cases that you would describe would come under the Statutory Powers Procedure Act. I am just wondering if you could give me an example. I cannot think of one.

Mr Thomson: The section I talked about is primarily to deal with appeals, for example. We have introduced the employee appeal, so we have a separate process for appeals and we want that to apply instead of the process established under the Statutory Powers Procedure Act.

There are some decisions that employment standards officers make, and I can undertake to provide you with a list of some of those, that are the kinds of decisions where we did not want to set up a process that would require an employment standards officer to have a full hearing under the Statutory Powers Procedure Act before he could do the initial steps; for example, under the Employment Standards Act, those that involve verifying a claim.

Those would be the kinds of steps that we wanted to be able to have employment standards officers can take without being tied into the SPPA process. Then, when they do make a determination, the act itself sets out a process instead of the one that the SPPA requires, although we think the process that is in the bill would meet all the intent of the SPPA in terms of protections.

Mr Offer: My first question really emanates out of my response to the last question by Ms Murdock, which dealt with when an order has been issued by the branch in the first instance. I do not know how it is styled. I cannot paint a picture as to what it would be. I do not know what it would look like, but you are saying no matter how it looks, there are 10 directors and four of them appeal, then the order is not stayed, for want of a better word, pending the determination of that appeal. It is joint and several liability. Those remaining six are on the hook for 100%. If, for instance, the equation is 10 directors and nine appeal, that the person is on the hook for all of it.

Is it the intention of the legislation that no matter how many directors there are, if one registers a notice to appeal for review, the order will proceed unless all have taken part? In many cases you do not even know how many directors there are.

Mr Thomson: Essentially it deals with staying things. It deals with when you can actually pay the money out of the wage protection program. You are asking when you can go and collect from some even though others are appealing. Is that the issue you are raising?

Mr Offer: There are two issues. The first is that the appeal may be valid and you have either got the money or you have not got the money and you have only heard an appeal from 50% of the directors, or some of the directors, to determine that. I guess the question is, is the money out or is the money not out?

1550

Mr Thomson: My understanding, and I will need to confirm this, is that at least with respect to the company versus the directors, if you have a final order against the company, we can act under the wage protection program. I am not sure what the answer is if we have appeals from some directors against whom orders have been made and not from others. I will need to determine that and let you know.

Mr Offer: That would be quite helpful.

The next question I have deals with the regulation-making power, and there are two areas which are of concern. The first is the regulation to increase the compensation. The second is this other thing called "such additional amounts as may be prescribed by regulation," and that is in both areas, that of liability by the program and that of liability by directors. Of course what we are talking about is something where we do not know what the additional amounts are. You may be able to give us some sense as to what they are today, but with all due respect, that may change in a couple of months' time.

The second problem I have is that this can be done without it going before the Legislature. I am wondering if you might be able to share with us your position on increasing compensation and potentially widening it out without it being debated in front of the Legislature when it may impact either on taxpayers or on employers or on both.

Hon Mr Mackenzie: The question I was just asking, almost in anticipation of your question, was: "What is the current status in other areas? Do we have the authority by regulation to change?" I think we do. That is something I would have to get you an answer on. The question of the merits of it is another argument altogether.

Mr Offer: You do not want to share with me the merits of that right now?

Mr Thomson: I could say the intention in the subsection that relates to broadening the coverage was not to allow—and I am quite sure it would not—the power to bring in, for example, liability for termination and severance pay where we have now cut it back with respect to directors. It was simply to allow us to be able to define as "wages" for the purposes of paying out from the program things that we might have missed. For example, we missed commissions and we were concerned that we should have the power to define as wages that might be paid to employees other things that really stand in the place of wages. We have left ourselves the opportunity to do that when and if an example comes along.

Mr Offer: I understand that very well, but you will also understand our position that these potential liability issues are ones that a great many people outside this room might wish to share with their member of Parliament.

When it is done by regulation it is not on the floor of the Legislature and never finds its way into committee. In a very real and fundamental way it somewhat excludes people from meaningful input through their MPPs. This is not to say through the ministry, but it does mean to say through MPPs, and so it does raise some concern.

Hon Mr Mackenzie: You are raising the point that instead of \$5,000, we could very well end up guaranteeing a \$6,000 payout if things improved another year, or something like that?

Mr Offer: While we are on that topic, and you have brought it up, the point is that we are also well aware—we are not working in a vacuum—that you are now having a certain consultation paper dealing with the whole issue of severance and termination with respect to potentially—I do not believe any final decision has been made yet—lowering the criteria for severance, termination, and increasing the amount that could potentially be paid.

All of this could funnel right into this type of program. When we speak about an average liability of \$2,000 or \$3,000 or \$4,000, you will know very well that if the severance pay is moved up, if more people are potentially liable, if termination is in fact enhanced, that you go right to the top and you do not need more bankruptcies, insolvencies or layoffs to do so. That is also what leads me to some severe concern over regulatory powers in a matter which can in a very real sense impact on liability to business, if there is, 19 months from October 1, 1990, an employers' tax, or if not, to the taxpayers of the province. I think we have a responsibility for that.

Hon Mr Mackenzie: The fact that we might raise the amount you are entitled to in terms of severance, or raise the severance, would not necessarily raise this ceiling. But you are right that there would be the possibility there in regulations. We decided anything we were doing would be on the basis only of moneys that were actually owed. As it is, what we have really taken a look at is the potential cost of the program. That in itself is restricted at more than we might have liked, simply because of what bank you can afford at any given time.

Mr Offer: I think we can debate that, but the concern I have today is that those two aspects in particular are under regulatory power as opposed to having to go through the legislation.

My next question is that it seems that under the legislation, in principle, a director is a director is a director is a director. It does not allow for a director to say: "Yes, I am a director, but I should not be as liable. I should not be jointly and severally liable because I am not the same type of director as all of those other directors." It takes away an argument on the basis of reasonableness, on the basis of, in many ways, a certain sense of justice. I am wondering if that is a fair reading of the legislation, before I go further.

Mr Thomson: It is true that this legislation—I should stress it simply mirrors the present obligations that exist in the Business Corporations Act—assumes that all the directors are equally responsible and equally liable and does not allow for different types of directors depending upon their involvement in the corporation.

Mr Offer: There are a number of companies, especially as we try to maintain a certain competitiveness which have on their boards directors who come from other jurisdictions and who lend a certain expertise to a corporation which is quite valued in terms of a corporation being able to be competitive. I wonder if there is a concern that maybe these individuals who have very much to give with respect to their particular expertise, but do not have the type of control and management of the day-to-day operations of the corporation, may now have a certain reluctance to be part of some growing Ontario corporation.

Hon Mr Mackenzie: I think when you take on the role of a director, you take on the responsibilities that go with it. I suppose we could always argue over whether a director has more authority or more power than another, but I think you would have a difficult time if that is the criterion you are going to use.

Mr Offer: Okay. It is important for me to hear your position.

Mr Thomson: We did decide to narrow down very carefully the obligation of the directors to only wages and vacation pay owing during the time that they are directors. That was the way we felt we would deal with the concern we have heard expressed with respect to the draft bill that broadened that liability.

Mr Offer: Right. I asked the question because under subsection 40f(2), you give that type of protection to employees who are construction lien claimants. They have an opportunity to argue before the program administrator that though they are not entitled *prima facie* to the program, they can be if they can persuade the administrator that they could not get sufficient information to preserve rights, were unable to preserve or were unaware of rights, and a whole variety of other things. It is giving the construction lien claimant, as an employee, that right to make the argument, but that same type of argument, though not in the same words, directed to a director is excluded under this legislation. I understand the point you are making, but I guess I am just somewhat concerned about what this means for other individuals, and directors of companies, and making those companies grow and prosper, be competitive and create jobs.

1600

Mr Thomson: I would point out that section 40f of the Act deals with the situation where one failed to file a construction lien in time. It only deals with the power to pay out the program when one, for good reason, failed to do that. I guess our thought is that it is a very different issue than one of different kinds of liability for different kinds of directors, which it was our view ought to be dealt with in the Business Corporations Act if it is going to be dealt with anywhere.

Hon Mr Mackenzie: I do not want the least bit of a hurry anybody here. I do not know what time your intervention was to finish, but the note I just got said they are holding up the policy and priorities committee because mine is the first item that is up and I know we were due to leave at 4. Is there a difference in time that you people have? The deputy certainly could stay for a few minutes longer. I know what is up and I know the importance of it.

Mr Offer: I understand.

I guess the last point I wanted to make on this one was that I believe it is a right given to people, for instance under the Income Tax Act or indeed under the Ontario Business Corporations Act, that directors and individuals can make those types of arguments that maybe primarily they are liable, but in certain circumstances they have the ability to argue they should not be liable. The only point I make here is that this legislation says a director is a director and they cannot argue it.

Mr Thomson: It is my understanding, and it may need to be corrected, Mr Offer, but with respect to the BICA obligation with respect to this issue I do not think there is the power for directors to excuse themselves or to be excused in certain circumstances. However, I will verify that for you.

Mr Offer: While you are doing that, I hope one takes a look at the Income Tax Act, which has very specific references.

The Acting Chair (Mr Wood): On behalf of the committee, I want to thank you very much, Mr Mackenzie, for coming forward. Did you have another question?

Mr Offer: Yes, as a matter of fact, I have. Really, I have just potentially one more, if you can just help me out on this. I think it will be very important for all members of the committee as we proceed with the public hearings.

A company goes bankrupt. An employee is out all four of the categories. Simply, what would he do, where would he go and how quickly would he be able, first, to improve his claim, and second, to get his cheque? I appreciate going through the bill, but I think we will have to have a very strong appreciation of this as people come before us and potentially talk about the process.

Mr Thomson: If I could set aside for a moment how the federal program might work and deal with the provincial program—

Mr Offer: Absolutely.

Mr Thomson: —that employee would, as he or she does now, come to the employment standards branch and launch a claim. The employment standards branch and an employment standards officer within that branch would then seek to verify the claim. There are two issues here—basically, one issue: Is there a valid claim and for how much? This is all really one issue.

That can take a short amount of time. In some cases it can take a bit longer, because in particular in relation to severance and termination pay there may be debate about how long the person has worked at the corporation and what kind of records are there in the corporation, particularly in bankruptcy situations. If the person was away for a period of time, how long was it? Did it affect how much severance is payable?

It is our hope that in all cases, even the more difficult ones—I am setting aside cases like Varity, for example, every major cases—we can have processed the claim in approximately three to four weeks maximum. There are a number of cases that can be done almost immediately, but there will obviously be cases that will take longer than

that. At that point in time an order is made against the employer.

What we have yet to determine firmly as policy is, “How much time should then be spent trying to collect that money?” It is our hope that at that point, either before the order is made as a result of mediation efforts involving the employment standards officer or after the order has been made when the employer recognizes that he or she owes that money, payment can be made by the employer and there is never any need to go near the wage protection program.

If, though, it becomes clear that there will be a passage of time or there is going to be some real difficulty in collecting the funds, assuming there is no appeal, which as you know kicks in a whole different process, the assumption would be that relatively soon after that, in a matter of a couple of weeks, perhaps a bit more than that, a payment could be made out of the program to that employee in those cases where it does look as though the money cannot be collected or there cannot be an agreement about how much is to be paid, and then it is paid or there is going to be a very long process to try to collect those funds.

In the bankruptcy situation, we assume that money would be paid fairly quickly, because it should be fairly obvious as soon as the claim is verified, which can take some time, whether or not there are going to be any funds left after secured creditors and other creditors are paid. That is a situation where the money ought to be payable fairly quickly, as soon as or very soon after the determination is made that the money is owing.

Mr Offer: That is helpful. If the employer has not paid—certainly in a bankruptcy it would be highly unlikely—then is it the same order that would go against directors or is it served on the employer and directors at the same time?

Mr Thomson: There would have to be separate service on the directors, and remember, that is only for a small portion of the amount, so it has to be a separate order against directors. That could be done at the same time. If there is an employer from whom the money can be collected, then the plan would be not to do that until efforts have been made to collect from the employer. If it is a bankrupt employer and there is no hope of collecting from the employer, and assuming there are any directors who could be asked to contribute the portion for which they might be responsible, one could serve the directors soon after that and then seek to collect from the directors.

As we have estimated it, we think a very small portion of the total funds paid out would ever be recovered from directors. By far the largest amount of the money is coming from consolidated revenue, with a certain amount of recovery from employers, especially the non-bankruptcy situations, and then a small amount of recovery possible from directors.

Mr Offer: Just as a final question for myself at this point, if you have some of those figures, and I recognize that they are based on predictions, that would be very helpful.

Mr Thomson: All right. Those figures are different depending upon one's assumption about the economic climate over the next period of time, but we can provide you with some of those figures.

If I could, I have been asked by the staff, quite properly, if I would stress something I did not earlier. The directors' liability as well is not retroactive to October. It is only prospective as well. It does not date back to last October.

Ms S. Murdock: I have just one comment, and I do not know whether I am right—I think I am, though—in regard to Mr Offer's question in terms of directors' liability. Would the insurance that they get not cover any differential, or the fact that they were from another jurisdiction or whatever the company's insurance that they get?

Mr Thomson: Yes, certainly it is our expectation that there would be insurance that would cover the potential liability of the directors, and that is going to be much more readily available given the fact that we have narrowed the directors' obligation down to that which now exists. So the directors' obligation under this bill would be no greater, in fact somewhat less than now exists in the Business Corporations Act.

The Vice-Chair: Hearing no other questions, I would like to thank you for your presentation and all your assistance. We will be needing it, probably, as we go through this process. Does anybody have anything to bring before me before I adjourn? Hearing none, I would like to adjourn until 10 am tomorrow.

The committee adjourned at 1610.

Monday 29 July 1991

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Staff: Luski, Lorraine, Research Officer, Legislative Research Service



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Standing committee on
Resources development

Employment Standards
Amendment Act (Employee
Wage Protection Program), 1991

Chair: Peter Kormos
Clerk: Harold Brown

Assemblée législative
de l'Ontario

Première session, 35^e législature

Journal des débats (Hansard)

Le mardi 30 juillet 1991

Comité permanent du
développement des ressources

Loi de 1991 modifiant la Loi
sur les normes d'emploi
(Programme de protection
des salaires des employés)

Président : Peter Kormos
Greffier : Harold Brown



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday 30 July 1991

The committee met at 1002 in committee room 2.

EMPLOYMENT STANDARDS AMENDMENT ACT (EMPLOYEE WAGE PROTECTION PROGRAM), 1991

LOI DE 1991 MODIFIANT LA LOI SUR LES NORMES D'EMPLOI (PROGRAMME DE PROTECTION DES SALAIRES DES EMPLOYÉS)

Resuming consideration of Bill 70, An Act to amend the Employment Standards Act to provide for an Employee Wage Protection Program and to make certain other amendments.

Reprise de l'étude du projet de loi 70, Loi portant modification de la Loi sur les normes d'emploi par création d'un Programme de protection des salaires des employés par adoption de certaines autres modifications.

BOARD OF TRADE OF METROPOLITAN TORONTO

The Vice-Chair: I call the committee meeting to order. The first presenter is the Board of Trade of Metropolitan Toronto. Would you take the seat at the end of the table, please.

Mr Richardson: Thank you for the opportunity of appearing before you this morning to make a presentation with respect to Bill 70. The Board of Trade of Metropolitan Toronto has more than 15,000 members and is the largest board or chamber of commerce in North America.

The Vice-Chair: Excuse me for a moment. For the sake of Hansard, could I ask you to introduce yourselves.

Mr Richardson: In the next sentence. The Board of Trade consists of a volunteer structure and many committees and its role is to analyse legislative initiatives, debate policies and actively lobby on behalf of its members.

Today we are here as representatives of the labour relations committee. David Wakely on my right, of the law firm Winkler, Filion and Wakely, represents the labour relations committee. On my left, Terry Dolan of McCarthy Strault, a law firm in Toronto, represents the insolvency and creditors rights committee of the board. My name is David Richardson. I am the chairman of Ernst and Young Inc., which is an insolvency and receivership firm, and I am the chairman of the board of trade insolvency and creditors rights committee. Jim McCracken is also with us today in the first row behind me and he is head of the board of trade's legal department.

We have had numerous joint meetings between these two committees and have written three letters to the Premier and/or the minister with respect to Bill 70. The first two letters were written prior to the announced intention to amend the legislation. The third letter, which has been circulated to you today, is to express some new concerns that we have as a result of recent developments, particularly the federal

government's introduction of Bill C-22 to create a wage claim payment program, and the minister's announced intention to amend this bill. I believe Mr McCracken has also left copies of the prior two letters with the clerk of this committee.

We support the changes that we understand are proposed for Bill 70, particularly with respect to the elimination of director liability for the severance and termination portion of the coverage and the immediate cessation of liability once a director resigns, and also the comprehensive elimination of officers' liability, but we are concerned about a number of issues. I will ask my associates to address some of them. First, I would like to ask Terry Dolan to discuss the board's views on the need to harmonize Bill 70 with the federal initiative, Bill C-22.

Mr Dolan: What I would like to talk about is the situation where there is an insolvency. Both David Richardson and David Wakely are going to talk to you about the incidence of that, but I am going to confine my intentions to situations where that occurs.

There is in that situation the obvious need to have a harmonization between the two pieces of legislation. We have been giving some thought in our committee to just how that could be done and we have expressed them in the letters written, most recently in the last letter.

What makes sense to us is that the arrears of wages owing to an employee if there is a receivership or a bankruptcy should be the first and most important concern. That is the urgent need. If someone did not get a paycheque, he or she is going to be troubled, and that should be done quickly. What the federal legislation contemplates is that a claim would be submitted to a receiver or a trustee.

I digress for a moment to point out that in Bill 70 you have referred to a receiver as being a court-appointed receiver. Many receivers are privately appointed. That is a technical matter which should be picked up, because if you want to have a harmonization, what would make sense, we suggest, is that this legislation provide, first of all, that resort be made first to the federal legislation to pay the wage arrears. That could be co-ordinated if claims for both programs were submitted to the receiver, widely defined, or the trustee, as the case may be. That claim would then be processed by the person who has come in and taken possession of the books and records of the company, who is at least going to be in the best position, not to mention dealing with the employees directly.

That claim could then be submitted by the receiver to the federal program as contemplated there, and then if there is to be a greater range of coverage, as you have, and a greater amount of coverage, as you have in Bill 70, a point on which we will be making some comments later, then that supplemental coverage could be submitted to the provincial authorities.

We think, broadly speaking, that is the way that would work most efficiently. What you do not want, we would submit, is the situation in which claims are being submitted to the receiver or the trustee, on the one hand, for the federal legislation, and independently of that but simultaneously, claims are going to a program administrator. The chance for delay, so that people do not get paid anything, or duplication of payments would just be multiplied tremendously.

We think what that will mean in most cases is that where there is an insolvency, the arrears of wages, to a large extent, will get paid by the federal legislation. The function then of this legislation, Bill 70, in an insolvency will be primarily to pay severance and termination pay. In that situation, where you have a company that has failed and gone out of business and you do not resort to directors and officers, it means the province will not be able to recover the payments that are made whenever an insolvency or a receivership occurs. That is simply an indication of something to be taken into account.

Generally speaking on the harmonization, that is the way we suggest it would work: claims made to the receiver and the trustee first to the federal legislation; it can happen at the same time, but as a second resort clearly to the provincial legislation.

Now I suggest that I turn this over to David Richardson and David Wakely to carry on with some of the other points, and then if there are questions we can come back to this.

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Mr Richardson: I would like David Wakely to express the board's concerns with respect to private member's Bill 116, An Act to amend the Employment Standards Act with respect to Notice of Termination.

Mr Wakely: The bill has now received second reading. It is a matter of speculation whether the bill will ever be passed and receive royal assent, but in its present form it provides for an amendment to section 40 of the Employment Standards Act which would increase the amount of notice of termination that employees would be entitled to in businesses which had 10 or more employees but less than 200, from the current graduated amounts ranging from a week to eight weeks in the case of individual notice, and to 10 or 12 to 26 weeks, half a year, in the case of mass layoff. In the case of companies or organizations that had more than 200 employees, the notice would be increased to 52 weeks.

Simply stated, it is the view of the board, and I would submit, the view of industry and the industrial community in general that this type of notice is extravagant and excessive, and is far in excess of any similar type of notice that one can find in the western world. I am not aware of one jurisdiction where notice at this level could be found and I would submit, as I say, that it is excessive. In a period of time when it would seem to be important to present to prospective employers an environment which is likely to welcome them and give them the impression that Ontario is a place where they could comfortably conduct their business, this is not the type of legislation which will accomplish that end.

For your consideration I would merely suggest that and when the government intends to introduce amendments, as we have been told it will do, of an overall sweeping nature to the Employment Standards Act, serious consideration be given to maintaining the existing level of notice and not increasing it, and certainly not increasing it to these levels.

Mr Richardson: Thank you, David. Would you explain the board's view that severance and termination pay should not be covered by Bill 70?

Mr Wakely: Yes. The issue here is whether the contemplated legislation should extend to cover claims for notice and severance, and when I talk about notice here I am referring to the existing level of notice rather than the levels suggested in the private member's bill. The question is whether the fund, the program, should pay claims for notice and severance rather than simply for vacation pay and wages, as is currently the level of coverage contained under the Ontario Business Corporations Act, the OBCA.

The act, as we have been advised in the June release, will be amended to include severance and notice and in our respectful view these are forms of entitlement which are not appropriately contained in or to be dealt with under the Employment Standards Act. In the case of a failed business, there is potential for a claim for existing levels of notice as well as for severance, and it is entirely possible that the same employee who is no longer employed by this failed business would qualify for and receive unemployment insurance.

We suggest that the purpose of unemployment insurance is to cover situations where an employee has lost his or her employment. It is not fitting and it is not appropriate, we suggest, in the circumstances of a failed business venture that employees be in a position to receive from the fund only notice but severance and ultimately unemployment insurance. This will result in stacked or a duplication of benefits as we understand the operation of the bill. In a normal layoff or termination situation, an employer typically will provide actual notice of termination rather than pay in lieu of so as to reduce its liability in the event of discontinuance or a normal layoff or shutdown situation. The employer then is required to pay severance, that is true, based on a graduated scale ranging from one to five weeks based on length of service, but only in very rare instances is there a payment of both these things, for obvious reasons.

In a failed business situation, as we would anticipate that occurring, it will almost invariably be the case that employees will not have received actual notice, so there will be an obligation to pay wages in lieu of notice as well as the severance. In the case of a failed business it would appear, to us anyhow, anomalous that an employee would receive perhaps three levels of duplication of benefits: not severance and unemployment insurance, whereas the same employee who is laid off by a business that was not failing is just laid off in the normal course of business, would perhaps receive one, perhaps two, of those benefits but certainly not three in the normal case. We would suggest for your consideration that the amendments to the

make it explicit that notice and severance not be claims that can be made against the program.

Mr Richardson: The next point I would like to express for the committee is a concern that the administrative procedures under the bill are based on what we believe to be a significant misapprehension by the ministry. The ministry staff believe that approximately 50% of the claims that will be administered under Bill 70 will relate to non-bankruptcy and non-receivership situations, in other words, cases where an employer moves out of the jurisdiction without honouring its obligations to its employees or simply ceases operations and walks away. The board believes that these latter cases will only be a minority and that the overwhelming majority of cases will be situations that are insolvency proceedings and independently administered by a receiver or a trustee in bankruptcy.

The significance of this is that the legislation is being drafted to suit the exception rather than what we believe will be the rule. Who is better qualified, as Mr Dolan has said, with access to both the records and in many cases the unpaid employees than the trustee or the receiver? The appropriate approach, we believe, in an insolvency and bankruptcy case is that the receiver or the trustee should prepare the claim. He should send the claim for the approved amount of money to Ottawa for immediate issuance of a cheque up to the extent of the federal coverage. He should then distribute the federal moneys to the employee claimants and compute the balances, after deducting the federal contribution, due to the employees under Bill 70 and send that net claim to Ontario for the top-up payment, which will really in effect, as Terry has indicated, be a payment on account of termination. Then when the cheque is received from the provincial wage fund administrator, the trustee or receiver would distribute those proceeds to the employees.

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The reasons we think this should happen are that, first, we believe the federal fund should make the first payment; second, the receiver has the administrative system and the information to distribute the dollars; third, we do not think the employees should get whipsawed between two jurisdictions; fourth, trustees are all licensed by the federal government and are used to administering dollars on account of third-party creditors and beneficiaries of trusts; and fifth and most important, we think it is the most expedient system. I think the whole purpose of this legislation is to protect the employees and to put money in their hands quickly.

Under this approach the Ministry of Labour could then concentrate on the analysis and processing of claims against the fund that arise from other than insolvency and bankruptcy circumstances.

Then there are two technical points we wanted to draw to the committee's attention. Terry referred to one of them, and that is that subsection 40u(6) and clause 40e(1)(a) of the bill referred to trustees in bankruptcy and referred to court-appointed receivers. There are many insolvency situations where receivers are privately appointed or where they are appointed as the agent for a secured creditor but

not as a receiver or trustee, and where they are appointed as a liquidator under the Winding-up Act. We believe the definition should be broadened under this bill so that it sweeps in all of those other situations and provides more comprehensive coverage.

The board is also concerned that the legislation should not include additional amounts as prescribed by regulation. Clauses 40b(2)(d) and 40s(3)(b) of the bill provide that the coverage can be increased by regulation. The board believes that any change in the coverage or the director's exposure should be by way of amending the act with an opportunity for interested parties to be heard. Proceeding by way of regulation does not provide organizations like the board of trade and others with an opportunity to be heard on this issue.

Finally, we would like to thank you for the opportunity to express the board's concerns and to say that the Board of Trade of Metropolitan Toronto would welcome and participate in any ongoing dialogue with departmental representatives, particularly with respect to the important issue of harmonization with the federal legislation.

Mr Offer: Thank you very much for your presentation. The last point you made dealing with the regulation-making power under the bill is one which was brought forward yesterday. Certainly what it does, as you have indicated, is that it permits the ministry through regulation to determine the breadth and scope of payment and certainly even change some of the issues around the whole issue of wages. I believe that is a matter which should be before the legislators so that you will have a more direct input. I thank you very much with respect to all the matters you brought forward and on this question of harmonization.

Could you share with us some of the types of consultation that you have had? This matter in principle was announced last October. The bill was introduced into the Legislature just a few months ago and afterwards amendments were announced. Have you had any part to play in terms of meeting with the minister or the deputy on this particular legislation?

Mr Richardson: No. The board's input has been exclusively as a result of reviewing the original bill and the public statements that have been issued since then until Friday, when we had the opportunity to meet with the deputy minister and some of his senior advisers and explore with him the need for harmonization on some of the issues we have discussed here today. I think it is fair to say that we have found a responsive deputy minister, someone willing and anxious to consult with people experienced in this area in the business community.

Mr Offer: This is a follow-up question. The principle of providing wages and vacation pay to employees who are really victims of a particular company that has gone bankrupt is a principle you agree with, is it, or not?

Mr Wakely: In so far as the provision extends to wages and vacation pay we would support that, and we would acknowledge that there is a need for that. I think that is what is contemplated by Bill C-22 as well. In order to promote harmonization, it seems to us it would make a lot of sense that Bill 70 restrict itself to wages and vacation pay.

Mr Offer: The principle you agree with is one that does not extend to the severance and termination. Under this legislation and the two definitions contained within it, it is that at this point in time the taxpayers of the province are in effect potentially guaranteeing the severance and termination pay of every worker in the province. If the funding changes in terms of, for instance, an employer's tax, then it would be the employers that would be guaranteeing. So you feel that area is one which you do not agree with in terms of protection.

Mr Wakely: To the extent that I understand your question, we do not agree that it be extended to severance and notice. We think that the payment from the provincial Treasury probably makes sense as opposed to an employer tax, and I think that answers your questions.

Mrs Witmer: Thank you very much for the excellent points you raised. Certainly many of the concerns you have mentioned are concerns that our party has as well. We are very concerned about the harmonization. I hear you saying, and maybe you can just confirm for me, that you feel the province should wait until such time that the two bills can be harmonized before Bill 70 is formally introduced. Is that what I hear you saying?

Mr Dolan: I think you could take two approaches. You could wait for the federal legislation or you could draft this legislation to allow for that. I would think, speaking very generally, that if there is a federal program then resort must be had to it first. I am sure you have heard this as much as we have: The federal government says, "This time we really are going to enact amendments to the legislation," and in particular the wage claim payment plan.

Mrs Witmer: That is right.

Mr Dolan: I would think that is going to happen, but what is important to us is that if there is going to be harmonization at all you would need to resort first to the federal program. You should keep in mind that if you look at a company that is in trouble very quickly, your first choice, if you can, is you restructure and reorganize and you stay out of insolvency. If you have an insolvency and there is a receivership or a bankruptcy, a first choice is to try and sell it as a going concern. All of us who work in the field try very hard to do that, because it produces the best realization, not to mention that it saves the business. The corporation may stop, but those workers will still have jobs and the product will still get made.

All of your legislation, I would submit, should be directed towards those goals, towards going-concern transfers. If we get skewed on the other side, we will not have that, and that is not overall in the best interests of the province.

1030

Mrs Witmer: We heard the minister and the deputy minister indicate yesterday that the province was going to assume responsibility for Bill 70, as well as collecting from the federal body. I raised the question how you are going to make sure the administrative costs are going to be covered if the province assumes total responsibility for dealing with the unemployed worker and providing the money that the taxpayer and the province obviously then are going to pay. What would your reaction be if the province

assumes responsibility? I think we all realize you need only one body that you would access, and the province going to try to collect from another level of government. What is your response to that?

Mr Dolan: David Richardson commented on that particular, but it seems to me the primary thing is that claims be funnelled through the receiver or the trustee. Originally, that is going to be the bulk of the situations you are going to have, some kind of insolvency, or any number of technical reasons why there should be a bankruptcy or formal receivership, and those will, I believe, increase quite apart from the economic reasons. I would think the first step is it has to go through the receiver or the trustee, am sure it makes a lot of difference afterwards.

Mr Richardson: I think the big difference is that it is important it is clear that resort is made either to the province or to the feds, not jointly to both, and then not entering into a long dialogue between the two so that they can compare the claims. If Ontario takes the lead and says, "We will effect make the payment and then seek reimbursement from the feds for their portion of it," that would be administratively a step in the right direction. But rather than set up a large secretariat to develop to deal administratively with that, as I indicated in my remarks, I think the receivers and trustees have the systems and the information right there, the offices of the bankrupt companies to process the payments most expeditiously. It would just make an awful lot of sense if they were brought into the system and did that.

Mrs Witmer: Otherwise there would be duplication.

Mr Richardson: I think so.

Mrs Witmer: And there would be additional costs to the taxpayer.

Mr Richardson: Absolutely.

Mr Dadamo: On behalf of our side and our government, we thank you for making your appearance this morning and giving us your knowledge. Of course we are here to debate and discuss Bill 70, the bill we are here for, but Bill 116, which I have become the author of via private member's bill, will have its day in court, so speak, and we will have other times to talk about that.

Mr Richardson: We just wanted to be sure we got a chance to share our views.

Mr Dadamo: I thank you for that, but we should delve into the bill that is before us today. I also want to stress and just comment that this is not a ministry initiative. It is solely my intent to put it forth through a private member's bill, and we will have time to talk about it later. Nothing has been settled. You are right that it has had a second reading, and where it will go from there, I am not sure. But that time will come and probably you will have a chance to talk about that.

Mr Huget: Thank you very much for your presentation this morning. I just want a couple of points of clarification if you like. Are you aware of how many times the federal government in the last 25 years has suggested it was going to provide wage protection for working people in Canada?

Mr Richardson: I am familiar with how many times the federal government has indicated it is going to amend

the Bankruptcy Act of Canada, and certainly it is in the range of six separate bills that have been introduced. Most of those bills have in fact included wage protection measures, yes.

Mr Huget: In light of what they have done in 25 years in terms of addressing a very important issue, I will believe the federal initiative when I see it and not when I hear about it. Quite frankly, we have a situation in Ontario where workers are in need now, and I guess the logic of waiting for the federal government to take some initiative and of escapes me.

The other thing that interested me was that part of your presentation said the legislation we are dealing with today would be drafted in terms of going concerns, transferring ownership of businesses, and not so much dealing with the effects of bankruptcies. I wonder if you are aware of the number of problems that are experienced with workers being owed wages in going-concern transfers.

Mr Dolan: I do not have any statistics. The point I am making is that in drafting legislation, certainly you have to provide for the payment of wages where a business fails and there is a liquidation. What you should keep in your mind, I would respectfully submit, as a policy is that we want to encourage, one, reorganizations and, two, going-concern sales. You test your legislation against whether it is going to be for or against that.

If there is a going-concern sale in a consultancy situation, keep in mind that it will be by either a trustee or a secured creditor who takes the assets of the old corporation, which technically fails, but the business survives because someone else comes along and buys it, not from the old corporation, but from either a trustee or a secured creditor. Then you can address the issue of whether arrears of wages get paid.

My experience over 20 years practising in the consultancy field is that when you have a going-concern sale, there are employees who get terminated. Sometimes they are not hired in the new business, but those who are have to be paid their ongoing wages. They are not going to come and make that smooth transition if they do not get their ongoing salary. That is the way it works.

The Vice-Chair: I have to jump in here. We are running behind time and I am going to try to keep this somewhat close to it, so I thank you very much for your presentation on behalf of the committee. I know we will all be in touch as this bill goes through the workings of the House.

CANADIAN AUTO WORKERS, LOCAL 27

The Vice-Chair: The next presenter I have on my list is Mr Bert Rovers from the Canadian Auto Workers. Please take your place at the table. Good morning and welcome to the committee.

Mr Rovers: I just jotted down some notes that I felt I wanted to cover, and there are obviously some other things that have arisen since this was put together that I would like to talk to you about.

Let me at the outset compliment the committee for taking the time to hear—I have in there “us” because I had originally planned on having some workers with me, but in the process of attempting to get those workers, they have found part-time employment. When they have asked for

leaves of absence to be here, they have been faced with some fairly extreme difficulties from the employer. Nevertheless, it is my intention to make the presentation on behalf of those workers anyway, for the introduction of this legislation, which I feel is long overdue and much needed.

Let me talk to you about the two industries which closed down recently in London, first, D & C Roussy Industries and, second, Forest City Truck International. Both these industries were part of the trucking industry and were in business for over 10 years in the case of D & C Roussy, and over 35 for Forest City Truck. Both of these businesses got into trouble as a result of federal policies of high interest rates, the high Canadian dollar and deregulation. Let me make it perfectly clear that there were no other reasons.

The deregulation of the trucking industry is the son of free trade, which was supposed to bring any worker who lost his job as a result of this government policy the much-promised adjustment programs, which to this date we have seen nothing of.

The workers at D & C Roussy were laid off October 4, 1990, and were given no notice of layoff; nor were they paid any severance pay. Some received unemployment insurance benefits and some ended up on welfare, while the workers at Forest City Truck International were not given their one and a half weeks in wages or the vacation pay of the previous year. There was no notice of layoff or severance pay given.

There are workers who worked for this company for 27 years, so with the maximum limit set at \$5,000 under this legislation, there still would be a tremendous shortfall for these workers. At the same time, the federal legislation, which we hold responsible for the loss of these jobs, is just champing at the bit. Should these workers get any benefit from a trustee or under this bill, the federal government will set up overpayments on their UI claims and reclaim portions of this money.

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Let me once again urge this committee to expedite this process and get this legislation passed. It is really needed. There is not a single day that goes by that we do not receive a distress call from these workers.

It was interesting. I was listening to the presenter before me talking about the stacking of benefits. That does not happen, because the Unemployment Insurance Act already deems that to be continuation of wages for the purpose of denying people unemployment insurance. When you get to a worker wanting to use those wages to have them insured so that he can establish a UI benefit, at that point the federal government says they are not wages and they are not insurable.

Workers really become the victim in this process. I have gone through it a number of times with people and it is fairly hard to explain to a worker. The government calls this wages and is going to deduct it from your unemployment insurance, but if someone needs an additional week or two weeks and he has received pay in lieu of, the same government then turns around and says, “Well, they aren’t really wages and you can’t insure that, so therefore you can’t get on benefits.”

If the process we are talking about is to get wages to workers as quickly as possible, I suggest we continue with the format we are looking at under this legislation and not provide a whole bunch of rules and review mechanisms, because unfortunately what will happen is that it will get bogged down in bureaucracy. When you are dealing with company lawyers, receivers, you do not get an awful lot of communication.

For instance, Forest City Truck went into receivership, not a court-ordered receivership but it went into receivership when the Hong Kong bank, which was the mortgage holder on the building, took over. It took me in excess of three weeks just to get the papers as to how this business went down, and the answer I was getting was, "We have misplaced the papers, but as soon as we get them, we will get them to you."

I am trying to explain to the 50-odd workers in there what is happening, and I have to tell them the receiver has lost the papers at this particular time and cannot get them to them. It does not make for an awful lot of confidence and people start wondering what is really going on.

There are a number of games that get played in this particular process. Forest City Truck International was a dealer for Navistar, and Navistar moved in and displaced all the officers in that company and ran the business for some three weeks and then just simply disappeared in the piece and walked away, leaving the workers high and dry. I would think there is some liability there.

We need the employment standards officers to be able to go in and write directives. I do not believe in turning this over to the receiver and letting the receiver make recommendations, because in many instances I think the receiver has a vested interest. Let me tell you about one that I got a call from a worker on last night. I think it sort of paints the picture as to what lengths some employers will go to play games.

We have an employer in London. I will mention the name: GRW Industries (1985) Ltd. The same person had been in business as Local 2 and left a number of workers, simply moving the operation to St Marys when they got certified. He operated in St Marys for a period of time and got the town to make major commitments because he was going to locate an industry there. Within a year he abandoned that community and started up in Centralia. He operated in Centralia for approximately a year and ended up closing that business, leaving those workers high and dry. We had to take the matter to an arbitrator and get an award against the individual, and finally a year and a half later we ended up getting some wages to those workers, only at the same time for him to re-establish in London, where he is operating right now.

What happened in this particular instance is that he is in the process now of moving the operation to Tennessee and needs some time to do it, so what he has done is rent his farms to the business. There is a lease signed where the business pays \$93,000 a year to the farm for rent. He has sold some race horses to the business, which basically makes tubing, and then quit paying all of his creditors. What happens at that particular point, when the creditors start to move in, is that he makes an application for a farm

stay under the farm debt review because he is now farmer operating a tube mill in the city of London.

He is in the process of setting up the operation in Kentucky. I could take some time as to some of the skulduggery that is going on, about loans being made from a company that basically, they tell us, has no money in an American corporation. They cannot find the trucks because they are in the US. These workers are working too and they are phoning: "What's going to happen to my vacation pay that is owing? Are we going to have to fight for a year and a half, and if so, are we going to get it? What about my notice?"

That is not the only company that has played this game in our particular area. I can give you an example of another employer, and this happened quite some time ago. There was a bankruptcy and a viable business was sold. At that time it was a company that had four partners. After the bankruptcy the four partners ended up each owning a piece of the company. The workers that left during that period of time never did get any severance pay. We still have a claim at this time before the employment standards branch. This happened in 1988.

The company then gets reborn through a buyout. What happens is, the name gets changed, we enter into a collective agreement with the new employer, again the name gets changed, and as recently as four months ago the name was changed again, and all during this time what you do is you cut down the workforce until you start coming below employment standards.

What has happened is that in all the restructuring you are going to have a major fight on our hands on behalf of those workers. We are going to have to get lawyers involved and what have you, because in tracing through the various companies that have been set up, every single one of them has the same four major officers within that company. We are going to make the claim to the employment standards branch that this is one and the same and when you add them all up together they are in fact in excess of 50.

These are examples of companies that are operating in Ontario, and there are lots of horror cases I come across many times from workers who are unorganized and have no place to turn. The games do get played out there. This is why I am in support of the legislation, because it finally puts some teeth where you have employment standards branch officers going in and hoping we can get this thing expedited as quickly as possible.

We do not need this diverted by having someone turn over to the receiver or talking about, "Let's not do anything because there's federal legislation coming." I have been a staff representative for over 14 years and I have been waiting and waiting for the federal legislation to come through. It always seems to be that people play politics with it. What they do is they come close to the end of the legislative session and they introduce a bill knowing full well it is going to die on the order paper.

Workers have been caught any number of times. I believe you me, there is a considerable amount of frustration out there on behalf of these workers. I would think that employers would want to have this cleared up as to what

happens with vacation pay, severance pay and all of these other issues.

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When I say I have been on staff for 14 years, I have been a worker in a plant for a number of years also. I still go back to years ago, when a worker was working in the plant and the employer had to pay on a weekly basis into a savings bank book so that at the end of the year the worker could go to the bank and take that book and cash it in, and that is how he got his vacation pay. The employers lobbied very strenuously that this was a problem for them because in paying those stamps it was taking away from the cash flow within the company. Let me tell you that the government decided up changing that so that these employers in fact could be able to hold the money and it would not impact on their cash flow. I think as a result of that workers are now ending up on the short end of the stick, because vacation pay, notice and severance pay just seem to get thrown by the wayside. I think something has to be done and some legislation have to be put into some legislation to protect these workers in this case.

If we do not have this type of thing, the other scenario you have is the uncertainty of when we talk about, "Maybe we should try to keep the company together so we can sell it as a viable concern." If I am not sure that this is going to be sold or that it is a viable concern, perhaps I should start looking for other employment and provide the 14 days' notice to the employer. Then try to sell it at that particular point and you are going to have some problems. We don't have some certainty there for the workers that in fact the vacation pay will be guaranteed to those workers so that they have a reason for staying with that employer if they are talking about selling the ongoing concern.

As I say, having been involved in a number of these issues and the problems that are presented, I could go on for a fairly lengthy period of time. I can get into dealing with the specifics of individual hardship cases, but I just felt that it was important, coming from the London area, that I come here to talk about the problems we have, but also to support the legislation that is being proposed, because believe you me it is needed out there and needed very badly.

Mr Huget: Thank you very much for a very informative presentation. I am particularly interested in the experience in London. I live fairly close to London and Sarnia, and certainly I am aware of some of the problems you are experiencing there.

I wonder if you could give me an indication in terms of how much you have an idea how much is owed the workers in the various examples you refer to. For example, D & C Roussy and Forest City Truck: In a ballpark sort of total figure in terms of wages, vacation pay, severance pay, is there any way you can put a—

Mr Rovers: No, I cannot put a ballpark figure on it. In the D & C Roussy case we are talking about in excess of 300 workers, and then what we would have to do is take a look at what the eligibility rules would be based on their years of service. In the case of the Forest City Truck employees, when I gave the example of 27 years of service and the maximum you would get under the legislation is

\$5,000, if in fact the person was to get the amount of money he was entitled to as far as pay in lieu of notice and the severance pay and the vacation pay owed are concerned, for that particular worker it would be in excess of \$14,000. We are talking about 52 or 53 employees in that enterprise. There are people, obviously, with fewer years of service.

Mr Huget: I guess it would be fair to say that in all these cases, really you are looking at substantial amounts of money from a total dollar value point of view.

Mr Rovers: Yes.

Mr Huget: But more important, they are very much needed dollars by working employees and working families. I am particularly interested in the reference to the person with 27 years' service, owed \$14,000. Could you give me an indication of his reaction to finding himself out of work without any severance pay, termination or back wages that he was owed?

Mr Rovers: His initial reaction—the individual, in talking to him—was one of surprise. The reaction of the individual's wife was even greater. She just totally broke down, because they thought they were coming very close to where they were starting to take a look at the possibility of going into retirement. As it turns out, there is the whole question of the pension plan at this particular time. It now will have to be wound up. They do not have answers as to what is going to happen with that program. Then to find that your last week or week and a half paycheck is not there, that the vacation pay is not there, that the severance is not there and that the job is basically gone—total frustration, especially on the part of the wife. I think the husband in this case, the worker, because he is a top class diesel mechanic, felt there was going to be a transition for a while but that he would survive. But the wife had a hell of a difficulty with it.

Mr Huget: Just one short point. Do you feel, in your view, that workers' wages, particularly back wages, severance pay and vacation pay, and the money owed working people for providing a service and doing a job, should at least be treated as being as much of a priority as other creditors in society?

Mr Rovers: It should not be given equal priority; it should be the number one priority. As I said earlier on, if you go back a number of years where the vacation pay was paid to workers on a weekly basis and it was the business community lobbying that took it away and they basically held it in trust, I think they have now a moral as well as a legal obligation to pay that vacation pay to workers. They are entitled to it. The wages the people have worked for—they were not speculating at that particular time. They were not investing it in order to make a profit on it. That was their livelihood. They are very much entitled to those wages, and that has to be the number one priority and not be tied down in a lot of bureaucracy. It ought to be gotten to those workers immediately, as quickly as possible.

Mr Offer: Thank you very much, Mr Rovers, for your presentation. I think that all members, not only of this committee but certainly of the Legislature, are well aware of the devastation of the recession and the amount of people who have been so badly hurt by it.

With respect to your presentation, you have spoken in real terms about what this means in terms of dollars to people. The bill in its original form, as you will know, made directors and officers potentially personally liable for not only wages and vacation, but also for a determination in severance pay, which you have already spoken about. The government has brought forward amendments which have altered this. They have altered it in this way: It has made directors only potentially liable for wages and vacation pay and has left, through the consolidated revenue fund, the taxpayers of the province liable for a portion of the termination and severance pay.

I know you have many years of experience. I am wondering if you can share with us your opinion, first, as to whether those amendments, based on your presentation, should have been made by the government, and second, should the taxpayers of this province potentially stand liable for severance and termination pay for employees?

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Mr Rovers: The fact that the government came along and made some amendments to the bill as it relates to some of the officers—I am not all that concerned about that aspect. What I am more concerned about is, let's get this legislation passed at this time. If it requires the government to do some further study on that area, then let's do that studying six months from now, a year from now, but let's not delay as far as this legislation on that issue is concerned.

I think what happens is that a lot of times, and workers see it, you end up having some people pick on one particular area where there might be a bit of sensitivity, and as a result of that the whole bill gets scrapped. I think the way the government has handled it is that it proposes an amendment. At least that way we can get the thing through and then we can go back and revisit that and we will have some time to deal with it. I think from a worker's point of view it makes a hell of a lot more sense to get it done in that fashion, because I would not want this whole process to get bogged down over an issue about the directors and the officers of the company. I have some personal views on that. I think in a lot of cases the officers perhaps should be held responsible. But when I look at this legislation, I am afraid I do not want it to get bogged down on that basis, and I think that is what is going to happen. Politics is going to get in the way and workers are going to get hurt.

Mr Offer: I recognize that you are concerned about the process of legislation, but the fact of the matter is that the legislation has been introduced. We are now in committee and we are listening, albeit in a shortened form, to public hearings this week. A couple of weeks from now we are going to be talking about clause-by-clause. So this is the time.

We are not talking about federal legislation, which we have no control over, or the priorities that wages, severance and termination pay may have in bankruptcy. We do not have any ability to change that; that is federal legislation. We are here now, and what I would like to obtain from you is your opinion whether the government should have introduced those amendments to the bill.

Mr Rovers: As I say, I do not have any problem with them introducing those amendments, because quite frankly I think if you are involved in some of the politics, the thing is just going to get bogged down and we are going to deal with it.

Let me give it to you from the point of view of a worker I was talking to the other day, that it is really amazing that we can have governments, through policy, end up having impact on industry and as a result of that they end up closing. I cannot get at anybody, but if I am walking down the street and somebody punches me in the nose, I can eventually go to a crime compensation board and get some form of compensation. He is very frustrated. "My industry," he says, related to the trucking industry, "has been closed because of federal policy. Thank God the provincial government is going to at least take a look trying to help us with it."

That is the way the workers look at it out there. They do not look at it about all of the idiosyncrasies of legislation, but they do recognize that if the whole issue you raised about the officers and whether or not they should be liable stays there, it is just going to get bogged down. Take that issue away, deal with it at some other time, and get this bill passed. Yes, it is going to cost the government some money at this time, but the government ought to be there to help people.

Mrs Witmer: Thank you very much, Mr Rovers. It is obvious you are very concerned for the employees who have suffered job loss and not been compensated. You just mentioned that the government ought to be supporting these people. I think it is important that we differentiate it is not the government; it is the taxpayers in Ontario who will be funding this program. I think one of the reasons we have to carefully examine this bill is to make sure that we do not overburden those taxpayers and that those people fully understand what is taking place.

I heard you say that people were requiring more than the \$5,000 limit that this fund is going to provide. If you had a chance to put in an amount, what would the maximum be? Do you think \$5,000 is enough, or should the government be looking at a larger amount?

Mr Rovers: I think they should be looking at a large amount based on people who have a great many years of service.

Mrs Witmer: What would the amount be?

Mr Rovers: The formula is already in the act based on what a person would get based on pay in lieu of notice as well as the severance pay. They should be taking a look at that amount of money.

Mrs Witmer: Are you saying that if they are owed \$14,000, that should be considered?

Mr Rovers: If they are owed \$14,000, that should be considered. I think the employment standards officer in an investigation should be in a position to make certain recommendations, should have the authority to make the recommendations. If there is anything the least bit suspicious I think the government should turn around and take legal action against companies who play games, such as the example I have just given you with GRW Industries who

they play the game to try and get around the legislation and ultimately try to get the taxpayer to be the responsible party. I think the government should take action and prosecute those employers; in fact, go after assets.

Mrs Witmer: So I do hear you saying the \$5,000 maximum is not enough and is something you would like to see changed in the future.

We have talked about the funding, and right now it is being funded through the consolidated revenue fund. Would you support a payroll tax?

Mr Rovers: Yes.

Mrs Witmer: Okay. The third question I have, and the last one: Business in this province is telling us that legislation such as Bill 70 is having an impact, that it is rightening business away from the province, and that as a result some jobs are not being created, that there is not the same incentive to move to Ontario. Do you sense this is happening? Do you sense this is real?

Mr Rovers: I think with every piece of legislation that has come down in the last 10 years, businesses have told us they do not like it, that it is scaring business away, that they cannot operate in that environment. There is a lot of fearmongering going on out there.

I think employers can live with the legislation and will learn to live with the legislation, at least employers who plan on acting responsibly. The fly-by-night operators who are in it for the short run and maximizing of profit are always going to be complaining, but we have worked in our union with a lot of employers where employees will get severance pay far in excess of this. This has been worked out well in advance. Early retirement options are available for people, severance pay is available for people, notice pay is available for people, and counselling for people leaving. We have been able to work those things out. There are a lot of employers out there who are willing to work those things out with their workers and have no difficulty with it.

I hear almost on a daily basis from employers about all the fearmongering that is going on out there. I would be very suspicious about the fearmongering going on out there whether they are really in it for the long haul or whether they are just out there because they want to maximize profit.

The Vice-Chair: I would like to thank you for your presentation. I am sorry, Ms Murdock, but we are out of time and we are over again. So thank you once again, and I know that you will be watching quite intently as things go on.

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CANADIAN MANUFACTURERS' ASSOCIATION

The Vice-Chair: The next presenter we have is the Canadian Manufacturers' Association. Could you please come forward and for the sake of Hansard identify yourselves.

Mr Nykanen: Good morning, Mr Chairman and other members of the standing committee on resources development. My name is Paul Nykanen and I am the vice-president of the Canadian Manufacturers' Association—Ontario. To my right is Jan Wade, vice-president of human resources with CCL Industries Inc and chair of the CMA human

resources committee. To my left is Ian Howcroft, employee relations policy adviser with CMA Ontario.

We appreciate the opportunity to present our views and concerns on Bill 70, the employee wage protection program. Before we present our position in regard to the bill, I would like to make a few comments about the Canadian Manufacturers' Association. The CMA represents a broad spectrum of manufacturers, covering all sectors of manufacturing, which are geographically located throughout the country. Two thirds of our members are located in Ontario and represent 70% of our manufacturing output. Our member companies range from small manufacturing firms to large multinational corporations. However, the majority of our member companies have fewer than 100 employees. The Canadian Manufacturers' Association is currently celebrating its 120th anniversary.

The CMA is involved in many Ontario government initiatives at the present time, including, to name a few, the environmental bill of rights; the Fair Tax Commission; review of the Ontario Labour Relations Act; employment equity; pay equity; the review of the Employment Standards Act, including termination pay, severance pay, minimum wage, technological change, employee share ownership and the employee wage protection program. The government has a very heavy legislative agenda and all attempts must be made to reduce rather than increase the already onerous regulatory burden.

With regard to the employee wage protection fund, I would like to state first that the CMA supports the concept or intent of protecting employee wages. Employees who have worked for and have earned their wages have a right to these moneys. However, the extent of this right must be balanced against the greater right of society. All problems cannot be corrected through legislation. In fact, legislation without a thorough analysis of the economic impact on Ontario can exacerbate the problems we currently face.

Ontario must become more competitive if it is going to succeed in the global marketplace. If we do not succeed, Ontario's standard of living will decline, more jobs will be lost and we will not be able to afford the generous social programs that currently exist, let alone be able to afford new programs.

Because Ontario is already overlegislated, overregulated and highly taxed compared to competitive jurisdictions, our government must prioritize its initiatives. Unless there is a balance between well-intentioned social legislation and a competitive business environment to support the programs, legislation will do more harm than good for those citizens whom the programs were meant to assist.

Jan Wade will now speak to some of the specifics of the employee wage protection program.

Ms Wade: To start with, it is essential that the provincial government work closely with the federal government now that the federal government has announced its intention to increase protection for wage earners in its reform of the Bankruptcy Act. All systems or programs should work in tandem to avoid duplication or unnecessary and expensive bureaucratic and administrative delays. I think we all agree that resources, whether they be government or industry, are limited at this time and must be used as effectively and

efficiently as possible. Canada's competitive position is hindered every time non-uniform or inconsistent legislation is introduced.

Although the government has stated that funding for the wage protection program will come from the consolidated revenue fund, we want to reiterate the importance that no employer tax or payroll tax be established to fund the program in the future. To do so would be detrimental to the economy of Ontario by making it even less competitive, resulting in fewer jobs for Ontario workers. Almost all jurisdictions with which we compete offer a far more competitive tax environment.

Further, although we support the program being financed from the consolidated revenue fund, we do not endorse the increased deficit to do this. Rather, the government must prioritize its initiatives and programs to determine which will be funded and which will not. Again, this emphasizes the importance of conducting a proper cost and benefit impact analysis, as Ontario cannot afford to finance all government goals and initiatives.

We emphasize this aspect on funding because of a comment made by Minister Mackenzie in his July 18, 1991, letter to the CMA. He stated: "The employee wage protection program will be financed through the consolidated revenue fund. The Treasurer has announced that there will be no new payroll tax for the first eighteen months of the program." At no time in the future should the government introduce an employer or payroll tax to fund this program.

The government must limit the coverage to wages and vacation pay and exclude termination and severance pay from the wage protection program. Job losses should allow employees recourse to the wage protection program for unpaid wages and vacation pay, within limits. Employees could then avail themselves of unemployment insurance benefits.

With regard to the coverage, the CMA's position is that it should only protect wages for two weeks or two pay periods, whichever is shorter. If an employee wishes to work for a longer period without being paid, he or she does so knowing that he or she may not receive additional wages. The employee voluntarily assumes such a risk, and therefore that period should not be protected by the wage protection program. The \$5,000 limit is too generous and should be reduced as there is a risk that thousands of additional jobs would be lost permanently because of the high cost of doing business in Ontario.

Ian Howcroft will finish the formal presentation.

Mr Howcroft: I would like to state that we were pleased to see that the officers' liability was removed from the original version of Bill 70 and that the directors' liability was also limited. However, we feel that directors' liability should be removed from the employee wage protection program entirely.

Companies that are facing financial disaster need competent and qualified directors with the requisite experience to perhaps salvage the enterprise. Providing for directors' liability creates a major disincentive to attracting qualified people to these positions. The government should do all it can to encourage such persons to assume the role of director and to turn the enterprise around and make it a viable and

profitable business. The only solution to closures, layoff and unemployment in general is a public policy environment that encourages investment in machinery and equipment which in turn retains and creates jobs in Ontario. Director insurance not only adds a significant additional cost to doing business in Ontario but is unaffordable or unavailable for marginal companies.

To conclude, the CMA recognizes the importance of employees' rights or entitlement to earned wages. We can support the government's objective in pursuing this goal with our aforementioned caveats and concerns. Given current economic realities, the government must ensure that all legislative and policy initiatives pass the competitive impact test. If a policy will do more harm or be detrimental to the province's competitive position, it should not be implemented. This will require the government to do more background studies and have more proper and meaningful consultations.

It is hoped that these comments will help the committee in preparing its report. Major improvements were made but there is still room for more.

We would be pleased to answer any questions the committee has on our comments or any other related matter. Thank you for your attention and for allowing us to make this presentation.

Mrs Witmer: Thank you very much for your very informative presentation. I hear you say that you support the concept of wages. What is your opinion then on the rest of the package? I did not hear you supporting vacation pay either.

Mr Howcroft: No. Wages and vacation pay should be covered by the wage protection program. Termination pay and severance pay should not be covered.

Mrs Witmer: Could you just tell us why?

Mr Howcroft: Just because of the current economic climate. There is only so much we can afford, recognizing that employees who have worked for a period of time should have their wages protected to those limits, but there is just no way we can afford to cover termination and severance pay. That is too exorbitant a cost right now, especially given the current economic situation.

Mrs Witmer: You also mention that you felt the \$5,000 maximum was too high. Obviously, if you were only to cover vacation and wages, that certainly would not be necessary. What figure would you be looking at?

Mr Howcroft: With regard to wages, we have suggested that it be for two weeks or two pay periods, whichever is shorter. If someone wants to work longer than that, they voluntarily assume the risk. They recognize that they are not being paid, the enterprise may or may not be successful and therefore they do that with full knowledge. Therefore, wages should only be covered for the first two weeks and then after that they can make up their own mind whether or not they want to continue with that employer.

Mrs Witmer: So rather than setting a maximum such as \$2,000 or \$3,000, you would base it on the two weeks.

Mr Howcroft: For the wages, yes.

Mrs Witmer: What about the harmonization with the federal government? How do you believe the province could proceed as far as the introduction of Bill 70 is concerned? Should they do it alone before the federal government passes their legislation? What is your opinion on this?

Mr Howcroft: We would like to see as much harmonization as possible. If that means delaying it for a time, that should be done, just to make sure that the two systems will mesh together as closely as possible. As we stated, to have duplication or unnecessary bureaucracy is going to be a waste of limited resources. Therefore, all should be done to make sure that the two systems do mesh together. I know there have been conversations between the Ministry of Labour and the federal government. Those should continue and that should be the determining factor: if the two systems can work together. That should be the timetable, not an artificial legislative agenda.

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Mr Offer: Thank you for your presentation. On page 10 you talk about totally removing directors' liability. As much as that would shift all potential liability to the consolidated revenue fund, which would of course be the taxpayers of the province, and I think in fairness what you have said is you want that to be limited. One of the things I have seen under the legislation is that all directors of a particular company seem to be grouped together. I do not believe that is always the case; there are directors who have more of a control of an interest in companies and in their day-to-day operation than others.

Do you believe, which is not in this legislation, that there should be some right of directors to argue before a board or whatever that they in their capacity have exercised, for instance, a standard of reasonable care which could exempt them from liability? I know that somewhat goes against what you have stated, because you have wanted all directors to be totally exempt. In the event that does not come about, do you feel there should at least be a provision in the legislation which gives directors of a company who may be potentially liable in a personal sense for a great deal of money the opportunity to say, "I have in my role as director exhibited a sense of reasonable care and for this I would ask for exemption"? Do you believe that at the very least should be found in the legislation?

Ms Wade: Certainly our first stance is that we would like all directors to be exempt. The reason for that is that it becomes increasingly difficult to encourage directors to come to the board with this type of onerous legislation, so certainly that is the preference. I think the problem you have—although I suppose if it had to go through the way it did it would be nice to have some recourse—is how you establish to what level the director had knowledge and so on. I think we could get into a real quagmire, and that is why we feel very strongly that the directors' liability has to be removed.

Mr Howcroft: It would also increase the bureaucracy if someone had to determine whether reasonable care or due diligence was exercised by an individual director in each case. To avoid that we are strongly advising that all directors' liability be removed from Bill 70.

Mr Offer: Part of the legislation speaks to the regulation-making power. It says the ministry would be able to prescribe other payments that are wages for purposes of this legislation and also provide for increases in the amount of compensation which the program can pay, and this is stated to be regulatory power. Is it your position that this is fine as regulatory or should it be through the legislative channels—in other words, able to go through the Legislature and have the ability for public input and comment?

Mr Howcroft: Probably through the Legislature, given the impact you could have, because costs could skyrocket if it is just left to regulation to be passed without proper public debate.

Ms S. Murdock: Just a point on the directors' liability again: Jan, you said the liability of the directors is too onerous under Bill 70, and I am wondering how you see it as different under the present liability that directors have under the Ontario Business Corporations Act in terms of your argument being that it is going to be much more difficult to attract directors to sit on boards because of this onus they will have under Bill 70. What I am saying is that under the OBCA they presently have that liability, so attracting them is not a problem.

Ms Wade: I guess my understanding of the act puts the directors' liability here—certainly more onerous, easier access—and the people whom we have talked to in the business world certainly perceive it as being far more onerous than it is today. I do not pretend to be an expert on the act but certainly it is perceived as being more onerous. To that extent we see that people coming to the board are going to have second thoughts and it is going to limit the people we can attract. Attracting people to the board of directors now becomes increasingly difficult. As every company is consolidating and trying to compete, there is a time element, there are a wide variety of elements, and this adds to it.

Ms S. Murdock: Prior to becoming an MPP I sat on boards as well and had directors' liability insurance, depending on which board it was, of course, and how much money they had, but the thing was that there is such a thing as directors' liability insurance and that would cover them under this.

Ms Wade: It does and I think what we would see with this type of legislation in lieu of or as an add-on to the current legislation is that the cost of that liability insurance would probably increase very dramatically. Particularly for the smaller companies it would be very difficult to continue.

Mr Howcroft: Marginal companies that are already having a difficult time carrying on business are going to have to add the cost of insurance for the directors. That could be just another added cost for doing business in Ontario and could force them over the edge.

Ms S. Murdock: If the liability under the Ontario Business Corporations Act was different, then I would agree with you partially, but my understanding is that it is not and therefore there is no additional liability other than what is already asked for under OBCA. I have no further questions.

Mrs Witmer: I have one additional question. You mentioned here that Ontario is already overlegislated, overtaxed and overregulated. Bill 70 I believe has had a serious economic impact on business in this province. I have seen it in my own jurisdiction of Waterloo. I know of at least two businesses that decided not to expand because of the danger of legislation such as this and the impact it might have. I would like to hear from you of examples of things that you know businesses have done because of the potential impact of Bill 70.

Mr Nykanen: I think it falls into the same category as a lot of the other legislative initiatives we made reference to. If we take a look at manufacturing in Ontario, we have been in a recession since May 1989, so it has been a long, tough row. The other factors that have impacted on it, of course, are that we are now subjected to a tremendous number of aggressive global competitors and there has been an ongoing restructuring on a global basis.

One must recognize that manufacturing plants are fairly mobile. If you take corporations that have Canadian operations, and with the recession on a worldwide basis, if you have excess plant capacity in other jurisdictions where the costs are less or it is a lot easier doing business than in our province, decisions are going to be taken to either shut down or not expand or create additional investment in that particular location. So the impact of this, along with the cumulative effect of all the other initiatives, has a severe impact on our ability to compete. That relates directly to closures, layoffs and unemployment and causes Ontario the problems we are in right now.

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Ms Wade: If I could just speak a little from some personal experience, certainly I would agree with Paul that we are seeing businesses, as you have said, move out. The almost bigger concern, I think, is the lack of expansion and new business not coming into Ontario. Just within my company alone in the last year, we have closed our oldest plant in Toronto and moved business to other facilities both in Toronto and in the United States.

We see all our customers looking at their business, rationalizing their finance, trying to utilize their assets as well as they can. With the trade agreement, we are seeing that plants in the US have additional capacity and are able to supply the Canadian market with product. We have seen that happen just in our existing Toronto facilities where customers are pulling business out and taking it back into their US plants because it is cost-effective. They too are looking at rationalization and they get better utilization all around, and it is ongoing.

As we sat through the part of the presentation before us, there was the comment that we have had a lot of legislation before and employers will get used to it. Well, now is not before, and the times have changed. Between the globalization and the tremendous competition we are seeing from the south, I do not think we can compare with five years ago or 10 years ago. We are living in a different world.

Mrs Witmer: I appreciate that comment. Thank you very much.

Mr Howcroft: Also, the previous presenter said employers were fearmongering. Since May 1989, approximately 250,000 jobs have been lost in the manufacturing sector. That is a fact. That is not fearmongering.

Mrs Witmer: I am finished.

Mr Huget: Thank you very much for appearing this morning and providing a very good presentation. Would be safe in assuming that you support the principle of wage protection? Would you agree to that?

Mr Nykanen: Yes.

Mr Huget: In page 2 of your proposal you say that "Employees who have worked for and have earned the wages have a right to these moneys." Then you go on to say: "However, the extent of this right must be balanced against the greater right of society." Could you explain to me what that greater right might be?

Mr Nykanen: The funding, of course, relates back to the general fund and if there is unlimited access to large amounts of money, the responsibility for this is going to rest on the citizens of Ontario who are paying taxes. It has to come from someplace. That is one impact as far as the impact on society is concerned.

The other thing is that with the additional cost components, as I mentioned earlier, we have significantly higher taxes than our competing jurisdictions, this is going to add another cost component to doing business within Ontario which in turn is going to cause a reduction in investment and that is going to cause a further loss of jobs. That has greater impact on society than what we are dealing with here, so we are saying there should be a balance between the wage protection fund and the other impacts. In other words, all legislation, before it is actually put into effect should be subjected to a competitive cost-and-benefit analysis to understand fully the implications as a whole.

Mr Huget: Are you aware of how much of a burden on our current society people are forced to place on the economic part of our province by having to still stay alive and not be able to collect money owed to them in back wages, severance pay, vacation pay or termination notices? Would you agree there is some burden on society at this point because these people cannot collect money?

Mr Nykanen: There is a tremendous burden on a citizens during these recessionary times. Certainly we would agree we are facing a difficult situation right now as many citizens in Ontario are suffering, as are businesses. Profits are down, investment is down, consumer demand down; these are all direct impacts on society.

Mr Howcroft: The Ministry of Labour's own estimates are \$175 million. That money has to come from somewhere and you cannot keep having an escalating deficit and still go on indefinitely. Where would you suggest the \$175 million come from—existing programs that are supporting people on community and social services? It is limited. We support the principle, but there have to be limits.

Mr Huget: Would you say that—

The Vice-Chair: Excuse me, Mr Huget. We are out of time and I do not want to—

Mr Huget: I apologize, Mr Chair. I thought we had more time.

The Vice-Chair: No. We are gradually getting longer and longer. I wish to thank Ian for coming and bringing the concerns of the Canadian Manufacturers' Association. It will help us in our deliberations over the next few weeks when we are dealing with this bill. Thank you very much for your presentation.

MORE JOBS COALITION

The Vice-Chair: I will ask the More Jobs Coalition to please come forward and introduce yourselves for the benefit of Hansard and those of us on the committee. One of the things I would ask, not only the presenters but some of us on the committee—we do get a little lax—could you please come forward and speak into the mikes? Some of us have a tendency to lean back on the chairs and it makes it very difficult for Hansard.

Mr Kerry: As chairman of the More Jobs Coalition, we are very pleased to have the opportunity to meet before you today to discuss Bill 70 and the need to create a receptive climate in Ontario for job creation. My name is Dale Kerry. I am vice-president of human resources of Jannock Ltd, and I am joined today by three of my colleagues on the committee. On my extreme left, Susan Tanenbaum, who is sales manager of Locpipe Ltd, located in Whitby. To my immediate left is Mr Cal Balcom, manager of human resources at Snap-On Tools in Mississauga, and to my right is Graydon McNair, manager of human resources of Drug Reading Co of Scarborough.

The More Jobs Coalition was formed in May 1991 with the objective of providing the government of Ontario with constructive input from employers on Bill 70 and on potential changes to the Ontario Labour Relations Act and the Employment Standards Act. We are very concerned that changes to Ontario's workplace laws could seriously undermine the province's ability to maintain existing jobs and to create new employment opportunities.

The More Jobs Coalition is comprised at present of approximately 30 small, medium and large-size companies located throughout Ontario. Our companies represent approximately 50,000 jobs and cover virtually all of the employment sectors in the province.

Canada and Ontario are experiencing profound economic restructuring as a result of global economic changes. The restructuring of Ontario's economy and its industry base has been increased by the depth and the severity of the recession. During the 1982 recession, many of the job losses were temporary. Unfortunately, many of the job losses, in fact the majority of the jobs lost in the current recessionary period, will never be restored.

Our coalition is very concerned that this trend is going to lead to permanent long-term levels of unemployment, and we believe if the crisis is not addressed immediately the quality of life enjoyed by the residents of Ontario will decline.

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We believe the government of Ontario must act quickly before more jobs are lost. Our coalition believes it is imperative that employers, employees and the government

co-operate to ensure that Ontario maintains a receptive climate for preserving existing jobs and for creating new employment opportunities.

The coalition is concerned that initiatives that would dramatically impact the employer-employee relationship in the province could undermine our ability to compete internationally as well as our ability to preserve jobs in Ontario and continue to contribute to Ontario's high quality of life.

The coalition is comprised of companies that are committed to a future in Ontario. We are not voting with our feet. We are not moving to other jurisdictions. However, many of our customers are, and some are being forced to close. If the trend continues, many more companies may be forced to close or reduce their operations.

We are therefore appealing to the government of Ontario immediately to undertake policy initiatives which strive to create an environment which encourages job creation instead of designing ad hoc solutions to manage plant closures and economic decline.

The More Jobs Coalition supports the concept of a wage protection fund. We recognize the need to protect the wages that have been earned by workers.

We do have a number of serious concerns, however, about the employee wage protection fund as proposed in Bill 70, and we believe there are some issues that have been ignored or left undefined in the bill. We would like to see these issues resolved by your committee prior to the implementation of Bill 70.

The issues of concern which we discuss in more detail in our formal submission include the uncertainty that is created by the use of retroactivity, the somewhat vague definition of the term "wage," the ability to increase the level of compensation covered by the wage protection fund through regulation rather than through legislation, and the lack of a long-term funding mechanism to support the wage protection fund.

Our coalition's biggest concern, however, revolves around the restrictive and very limited consultation process which led to the development of this bill in the first place.

When the bill was introduced, its extreme nature relative to significantly increased manager liability and its retroactivity sent shock waves through the business and financial communities. The introduction of the legislation in its initial form without extensive consultation has undermined business and investor confidence in Ontario.

Our coalition is very concerned that the government may be planning to undertake other labour policy initiatives in a similar fractious and confrontational fashion. We do not see a limited consultation process coupled with a confrontational debate and legislative change after legislation is introduced as an effective approach to improving employer-employee relations.

Before initiating any changes to other labour legislation, our coalition will call upon the Premier and the Minister of Labour to undertake a comprehensive and meaningful consultation process. We believe the process should be province-wide and should seek input from all regions of Ontario.

Changes to Ontario's employee-employer relations will have a profound effect on Ontario's economic and social health through the turn of the century. We would urge you

to proceed with the utmost caution to ensure that our employees and their children do not suffer due to the mistakes made today.

To ensure that future changes to employer-employee laws recognize the needs and concerns of all of the stakeholders, our coalition proposed the creation of functional longer-term working groups to be put in place to ensure a wide-range consultation on potential changes to the labour legislation in Ontario. We believe that such working groups could play a required role of understanding and identifying needs before proposing solutions.

Recently, many organizations have put forward proposed solutions in the field of employer-employee relations. However, the More Jobs Coalition is very concerned that these proposed solutions have been put forward before the needs and the problems have been clearly identified. Without first identifying the problems, how can we co-operate to find viable and beneficial solutions?

Our coalition believes that the examination of specific reform initiatives at this time is premature. We believe that this comprehensive consultation process to identify needs and problems should be linked with government initiatives to develop strategies for specific industry sectors.

The More Jobs Coalition is very interested in ensuring that the ad hoc approach to consultation, which led to the development of Bill 70, is not repeated in other labour legislation. The risks are simply too great.

In conclusion, I would like to say that you, as legislators, have the power to ensure that an environment receptive to job creation is created in Ontario. We would call upon your committee to send a strong message to the Minister of Labour and to the Premier that future initiatives must be designed to create jobs and to lessen the burden on the unemployed, and we seek your support in this endeavour.

We also ask your committee to send a strong message to the Minister of Labour that a comprehensive consultation process is required before future labour legislation be introduced.

Thank you very much for your time and for the opportunity to address you.

Mrs Witmer: Thank you very much for your presentation. I am really quite intrigued by the proposal that you have just discussed regarding consultation. I would certainly agree with you. There needs to be a comprehensive consultation process. Unfortunately, it was not done with Bill 70 and, as a result, the legislation was badly flawed because all of the partners were not considered and the views listened to.

When you talk about that, who do you see selecting the participants? Do you see the Ontario Ministry of Labour, government, selecting the participants in these types of working groups? Would they be regional? How do you see that structured?

Personally, I think it is an excellent idea because I think there needs to be much more ongoing dialogue. This morning we have listened to two points of view and I can see there is a basic lack of understanding among people in this province, depending on whether you are the employer or the employee. I think we need to start looking at how

can we reach a compromise. But how do you see these being set up, on what type of a basis?

Mr Kerry: Most labour relations, most employer-employee relations in the province are conducted in a perfectly amicable fashion. The 1% or 2% that is not amicable gets into the press. The 1% or 2% that is not amicable, why the lawyers get hired. But provided that the government of the day genuinely wanted a balanced and realistic view of the ongoing practices of labour and employer-management relations and wanted an honest and balanced analysis of areas of efficiency and areas requiring change, I do not think the government would have any difficulty finding all sorts of people of quite good will who would be quite prepared to bring their knowledge to the sort of input that I suspect would be beneficial to legislators.

I think we would have no difficulty with the government making the choice. However, I would say that if you start from the perspective that one or another group is not genuine or is evil or is something else, then I think you are going to end up with an ineffective committee.

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Mrs Witmer: Well, if we take a look at the upcoming labour law reforms that are being proposed, how would you suggest that this be dealt with in order that all opinions be listened to and considered and heard? What type of consultation process?

Mr Kerry: The process to date has been virtually invisible. A few members of the union movement and a few lawyers representing management.

Mrs Witmer: That is right. Three and three.

Mr Kerry: Yes. That was not a very good process and I would like to say why I believe that. The labour lawyers on the committee are all fine people, but they do not represent management. They are not, as these people are, trying to run businesses day to day. They see a small fraction of labour relations when there is an arbitration, when there is a strike, when there is something requiring the process of law, which is a very seldom thing.

I would think one of the things to consider would be to have representatives at the shop floor level. They may not have a whole lot of legal knowledge, but they certainly know how business works. They know how people interact in business settings, and they know the sorts of things that create good and bad kinds of situations. So I would suggest as a first step, that we look at the people who are actually doing this work day-to-day right at the shop-floor level. I think we would gain from that a much better appreciation of what the true situation is.

Mrs Witmer: Would you like to see a draft document originally that you could respond to before any formal legislation is introduced?

Mr Balcom: I think so. Obviously there have been a lot of, I guess, perhaps even rumours around about potential labour reform, and not to really go down that road because I think it is a waste of time at this point. But certainly we would like to look at a draft document and then sit down and begin the process that Dale has outlined

Mr Offer: Thank you for your presentation. You covered a number of points in the brief presented. I know it anticipates the movement of government amendments and I think your position is quite clear that those amendments, as previously announced, must be moved and in fact accepted, as well as some other things that have not yet been addressed.

I note that you have spoken about needing assurances from Labour and Treasury that a new payroll tax will not be created. Those questions in fact were asked yesterday. Those assurances were not received, so I think this is put aside.

During this first morning of hearings, we have heard a wide variety of opinion on this legislation principle and certain aspects of it. I think that goes to make the case that there are many people who are concerned with aspects of the legislation and want to share their thoughts and opinions with us. Certainly we thank you for taking the time to do so.

Under the legislation, I would just like to get your thought, because it is clear that the principle of wage protection is accepted in this brief, but the legislation goes further. It is something I have been grappling with in terms of the legislation. The wages and vacation pay are potentially received through directors. There is a liability to directors for wages and vacation pay. But, in addition, under the legislation, workers may also have their severance and termination pay, or part of it, paid for by the taxpayers of the province, because that is where it is now paid. It is paid out of the consolidated revenue fund, and that is what we're left with here. We have no assurances from the minister that it will or will not be changed.

In fairness, I think there is a principle that we have to come to grips with in this area, and that is whether this legislation should potentially foist an obligation on the taxpayers of the province to pay a portion of termination and severance pay. No matter how right that may sound, we have to ask in principle: Is that what this legislation should do? Should this legislation be not labour legislation but social legislation? I am wondering if you can share with us any opinion you have on that issue.

I have a second point actually if I might, while you are thinking about that, with respect to the directors' liability: Do you see that this may be an impediment to people agreeing to be directors of companies? We know there are directors of companies who share, who come from other countries. They stand on boards of directors, they may not make a day-to-day operation, but they provide a certain expertise, they provide a certain enhanced competitiveness. My second question on that basis is: Do you see that this legislation may provide a barrier to those people standing as directors for companies in this province?

Mr Balcom: Perhaps we can divide this up. On the directors' part of it, I am not sure I am the best resource. Perhaps Dale can answer. We have had the opportunity on sitting in on pretty well all the presentations this morning. Where I as an individual would disagree with the CMA—they made the comment that they did not want to see a payroll tax, and certainly we do not want to see a payroll tax either—I am very concerned when you talk about general funding. To sit here and say, "Let's not have a payroll tax, but it is okay for the taxpayers to foot the bill," I have

a deep concern about that also. Again, perhaps in your roundabout way of getting to the question, I think you did make the statement about an unlimited liability. Obviously we are very concerned about that, deeply concerned. In Dale's remarks we are not against the idea of wage protection and vacation protection. I guess it really comes down to what we as a province can afford versus what we would like to extend to all the taxpayers or to all Ontarians. We would love to see it go well beyond that. Obviously we cannot afford that at this point. That is pretty well where we would be coming from.

Mr Kerry: There is perhaps a small side point to be made, on which I am expressing no particular point of view except to say that it would seem to me your committee should grapple with the question of whether legislation is confined to the payment of wages earned, which would include wages for time spent on the job and vacation pay and so on, and/or whether it should expand from that definition to the payment of things not earned but sitting there as entitlement in law under certain eventualities. For example, severance pay and notice are not moneys that have been earned, in my definition of the word. Do you see the distinction? I am not too sure how the committee should deal with that, but I think it is a distinction that has some bearing upon the strategic thrust of your bill.

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Mr McNair: I think there is one other thing that should be brought out. If we had had the consultation process, a lot of these questions and a lot of this time would not be spent now because it would have been resolved long before it got to this point. So I think we are just going back to the same thing. We need the consultation process. It has got to be part of the system. No matter what government is in power, we need that consultation process.

Mr Kerry: Can I try and answer your second question, Mr Offer?

Mr Offer: Sure.

Mr Kerry: It is our belief that, yes, this sort of legislation, while not necessarily in and of itself creating a problem or not creating a problem, is part of a larger framework of legislation. To the degree that a director is singled out as being liable under certain eventualities, then yes, it is very much of a deterrent.

As an example of that, I can use the concept of director liability under environmental law. Our directors are very concerned. They have responsibilities in law to exercise, and I have forgotten the words, but certain standards of care and caution and due diligence and things like that, and they ask very nasty questions of people like me about whether we can assure them as directors that we are abiding by good environmental practices. But I think we all have to work to these kinds of high standards, and when the director is singled out, he says, because I think business operates as much on perception as it does on fact: "What's going on here? Why I am being singled out for a particular thing here? I have to meet certain standards, and why should I, in order to hold what is not much more sometimes than a sinecure, put myself at this sort of increased risk?" Somebody says, "Really, you're not at that

much of an increased risk," and he says: "Oh? Show me." You cannot really show him. You do not know what is going to happen under certain eventualities.

To take that one step further, a large company that is successful can get directors' and officers' liability insurance if it wants to. But what about the smaller companies, and the ones particularly that are in trouble? Those are the ones that desperately need the strongest directors, and no insurance company in its right mind is going to sell directors' and officers' liability to a company that is in danger, because effectively the insurance company, I think, looks upon it as selling bankruptcy insurance, and is not very pleased to do that.

A director is at risk in many different ways, and this legislation, I would suggest, even adds a little bit to the risk of the individual business. In fact, it may add a whole lot to the risk of the business, because the smaller companies and the ones that are struggling really desperately need the best directors they can find. Even large companies nowadays are having a hard time finding good directors. For the small ones it must be terrible.

Mr Klopp: You talked about overregulation on page 6. It is my understanding that it was the Ontario government that first came up with an idea of a wage protection plan. It kind of looks in here as if it was us that thought of something after the federal people made their announcement. I am under the understanding that it was us that made the first salvo. Are you aware of that?

Mr Kerry: "Us" being the government?

Mr Klopp: Yes, the government of Ontario was the first one to make a suggestion that we are going to have a wage protection fund in Ontario. This makes it look like—it says here, "We are very concerned that the government of Ontario believes that it must introduce a similar wage protection." It was us, the provincial government, that first—

Mr Kerry: Yes.

Mr Klopp: Okay, you are aware of that. Are you aware that in the past 25 years the federal governments over time—I believe the number is seven—have seven times said they are—they have discovered they are going to help somebody, somehow, or whatever, made movements or noises. Are you aware of that?

Mr Kerry: None of us was aware of that until about 10 after 10 this morning.

Mr Klopp: Well, there you go. These are things that we read after, though. I just wanted to make sure I was not wrong. Heaven forbid if the Minister of Labour informed me wrong yesterday when he was here.

In regard to this legislation, the directors' part, in my understanding, is exactly the same as what is there now.

Mr Kerry: That is what I understand.

Mr Klopp: So listening to your comments—I get older every day, so there is always something more added on to my pressures and my life. But I think it should be clear that this program is exactly what, perceived or otherwise, is there. I want to make that point.

The point about the taxes, I think you are very fair on that, to go on both sides, and I commend you on that. The

minister the other day, when asked, "What are limitations?" think he was very fair and very open to say, "One of the things we have to look at is how much taxes." Taxes are taxes, whether it is payroll or whatever, and I think, in a fairness—and in fact the minister I think mentioned that too. He said the members of government are not immune to public pressure, especially nowadays. It seems that nobody wants taxes no matter what. Even if your taxes do not go up in the last budget, everybody is going around saying, "My taxes went up, my taxes went up." Of course they compare us a lot to the federal government, which is unfortunate, even if you are a Conservative in Ontario.

The shock waves that you talked about, I think a lot has to do with the Ontario Labour Relations Act, which seemed to be a big shock wave in my riding. Ironically when you talk about open consultation, the minister asked labour and business to get together and they wrote two reports and then both groups, I think, ran with the other one. In fact, one guy in my riding said, "So you passed legislation," and they brought this up to me. But I am glad you pointed out that it has not gone that far. All it is is those two reports and he is consulting. I am informed that he has roundtable meetings with organizations. Are you aware of this? Maybe none of your groups were invited to this roundtable. I would hope that you were.

Mr Kerry: We have asked to be represented.

Mr Klopp: Okay, because it is very important, as one who believes in consultation. I believe he has 38 organizations and I hope you can get on it, because I do truly believe, as you pointed out, you do not vote with your feet and go and Sunday-shop across the border, and I appreciate that. I just wanted a couple of those points made to help me in reading this.

Mr Kerry: I would just like to reinforce one point which was that the original three-and-three committee, in our estimation as a group, did not fairly represent management, because the representatives on that committee for so-called management do in fact see a side of labour relations that is a management side, but they only see a very small portion of what is really happening.

The Vice-Chair: Mr Huget, quickly.

Mr Huget: Thank you very much for your presentation this morning. I was particularly interested in the comments you have made in terms of the grass roots, if you will, of management and labour on the job floor starting to deal with some very important issues. I think it is crucial that we find some different ways of doing things. Having had an experience of being both an employer and an employee, I know there are sometimes conflicting interests there. Quite frankly, I doubt that there will ever be a case where everything is meshed, but certainly we can work a little bit harder to do that.

I want just to elaborate a little on my colleague's point in terms of consultation. I believe this government, and in particular the ministry, has gone to some length to consult with all groups on this particular bill to try to get a good cross-section of opinion here. On this bill it is my understanding they have consulted with 38 different groups. There were business groups, labour groups, community

groups, and if in fact that message is not getting out to the small business community, then we need to take a serious look at how we are communicating that willingness to consult. I appreciate your bringing those points to the committee so that certainly we can take them in a positive light.

The Vice-Chair: Any other questions, quickly? Hearing none, I thank you very much for your presentation.

Like everyone else here, if your group has been overlooked, I would hope that the ministry in future does include you in its consultation process. Thank you again for your presentation.

Unless I hear some other reason, I would entertain a motion to recess until 2 o'clock.

The committee recessed at 1210.

AFTERNOON SITTING

The committee resumed at 1411.

PHILIP HOWES

The Vice-Chair: I call the meeting to order. I would ask that Mr Howes come up and make his presentation. Just take a chair at the front.

Just to give you a bit of warning, for Hansard's purpose you have to sit up when you are speaking into the mike. Some of us have the tendency to get lazy through the day and start leaning back, and we have to remind ourselves. So I remind everyone that they have to sit up in order for Hansard to hear them.

If you are ready to start your presentation, please do so.

Mr Howes: First of all, I would like to thank the committee for allowing me to come and make this presentation. My name is Phil Howes—Philip when you are mad at me. I am the president, co-founder and major shareholder of a company called McLeod House Equipment Ltd. We are a Canadian-controlled private corporation, incorporated in 1976. We are currently in our 15th year of operation.

McLeod House is a small chain of rental, retail and distribution stores located in Metropolitan Toronto. We currently have three locations; a year ago, we had five. We employ 25 people; a year ago we employed about 48 people.

The shareholders of McLeod House include three others who are party to an agreement which could or could not be called a unanimous shareholders' agreement, depending on how you interpret it. One of them is a widow of a former shareholder and a former director, and there are five non-participating preferred shareholders. I have three directors on my board, including myself, one of whom is a school-teacher who has been a shareholder since 1984—he is not active at all in the business—and one who is my vice-president, who has been employed with the company since 1977 and became a shareholder in 1979. Actually, he was elected to the board of the last shareholders' meeting but has basically refused to serve until he has determined the outcome of this debate. I also have a certified general accounting degree.

I know that the members of this committee, because you are all members of the Legislature, and the employees of the ministry who drafted the legislation, have a sincere desire to make sure—and I would like to quote the minister from Hansard—"that the people of Ontario know they are assured of receiving the money they have worked for so they know they live in a society based on fairness and co-operation." These are values we all wish to see accomplished, without question.

From an employees' point of view, they may often find themselves in situations where they feel they have no real control over the work situation. That has to be stressful. In some cases I am sure they feel that rules and procedures are and can be changed at whim without consulting them, and that attacks people's sense of security, especially if the changes affect the rewards and recognition systems an entity has. It is difficult for people to work in situations where they do not feel they have security. People want to feel

rewarded in what they do. They want to feel they have made a contribution to a successful entity and will be rewarded for that contribution, and they certainly have right to get paid for their time.

As I understand it, that is why we have an Employee Standards Act, to fulfil these needs, to make sure there is an acceptable minimum standards regarding the basic employment agreement; financial standards to give employees basic sense of security; that certain fundamental rules cannot be changed or ignored; to make sure they are treated fairly to give a sense of recognition in the investment they make to a successful company and to reward them for those efforts, and to make sure there is a course of action or recourse if they are not treated fairly.

I am here today because this committee is considering proposed legislation, Bill 70, which enhances the Employee Standards Act to provide for an employee wage protection program and to make certain other amendments. Basically, there are two parts to that phrase and I would like to deal with them both.

The first part is the employee wage protection program. There is a need for some sort of wage protection plan to protect employees of firms that become insolvent or go bankrupt. Why? Because we are in a recession and it is severe and it is a lot worse than the last one and it is not over yet, despite what you read in the papers. Frankly, I think what you are getting told in the papers, that it is over, is being printed by the same people who told you last year that it had not started. There is high unemployment. The construction market in the city of Toronto where I work down 36% this year; it was down 20% last year; 56% combined is a lot. There is real economic hardship out there. People are losing their jobs. People are watching their unemployment premium or window come to an end and people can and are losing their businesses.

It is serious, so we have an employee wage protection program. What does it cover? It covers a broadly expanded definition of the word "wages" compared to any other legislation out there. It covers regular wages and overtime which is fine. It covers vacation pay for up to a year; that is fine. It covers termination pay. I do not know if that is covered under other legislation. I am not that well versed in it. It covers severance pay.

The minister says severance pay should be considered compensation to recognize the investment they have made. I have sat across the table from investors, and when it comes right down to it, investment is what you put in cash, and if a business fails, you lose it. They understand that, as investors, so I frankly question that.

It covers equal-pay adjustments, if required, and finally it covers such other amounts as may be prescribed by regulation. I do not know what that means, and I do not know what regulations are and I do not know whether that means there has to be a public process or not, but frankly, concerns me a bit.

How are we going to pay for the program? While the initial expected cost was to be \$175 million in the first 1

months, our government has indicated that will come out of general government revenues, which is the stated intent. You could argue that that penalizes the regular working contributing taxpayer, but alternatively I guess you can use the payroll tax. You could argue that penalizes successful businesses to support the failed ones. I do not know.

What I do know is that the next part of the act, "and certain other amendments"—I do not want to seem presumptuous here, and I am sure it was not intended to appear this way, but I honestly think that those four words are misleading. I think they are deceptive, and the perception from my perspective is that they were in fact intended to obscure some of the most damaging changes in rules, without warning or consultation, that I have ever seen. It does not make me feel like I live in a society based on fairness and co-operation.

If I can use an analogy, as MPPs you all are here and you all have this position because you are people of responsibility and authority and you have a sincere desire, I believe, to contribute to society. You are not doing it for the financial rewards because they are not that great, and you are basically willing to live and abide by the same rules you expect others to live by. In your responsibility as an MPP, you approve a submitted business plan for the government. In this case—and I do not mean to criticize, that is a whole other discussion—we have a submitted business plan which projects a large deficit, because you have legitimately felt this is the best alternative available. In performing your duties as an MPP, you have considered the business plan, based on the economic realities as you can best predict them. You have considered the risk and the potential criticism and you are prepared to defend your position.

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But what if it does not work? What if the revenues are less, just because there is a larger slump than was anticipated? People do not spend money so there is no consumption tax. Because they do not spend money, there is no personal income taxes or corporate income taxes. At the same time, the budgetary increases you have planned for go on, but you also have higher transfer costs to pay for some of the social programs in place and higher health costs as people deal, I think, with the stress of the situation. The net result is you have a much larger deficit than you originally thought.

What happens then? Quite often, your borrowing costs all of a sudden start to go up. Some lenders refuse to extend credit and just want their money back. Others will continue to support you, but only if you give them additional security of some kind, like a personal guarantee. Maybe you will give it to them. Maybe even some of them insist, and this has happened, that you make cutbacks or maybe lay off people in order to make sure you can continue.

The point of the analogy is that as an MPP, I believe you are effectively on the board of directors of the largest employer in Ontario, where people are probably hired and fired or laid off every day without your direct knowledge. Suppose you pick up this morning's *Globe and Mail*. You find out all of a sudden that you are personally liable for an indeterminate amount of unpaid wages, according to a new definition, and that the demand can be made upon you

without having to go through the company or the government, that you are liable for retroactive liability that goes back about 10 months. Or, if you are removed from office in the next election and the next government comes along and decides it has to make the cutbacks, you are still liable; you can be on the hook for two years from an indeterminate date, basically for ever, as I read it. If you are called upon to meet this liability, which clearly is going to be unlikely to happen unless there is severe financial difficulty and you are already in trouble, you can be fined up to \$50,000 if you cannot. If you go bankrupt, that does not go away.

Of course, when you cannot obtain the insurance because you just cannot, I do not think you would feel that was fair or co-operative, but that scenario is exactly what has happened to the small business sector of Ontario with Bill 70. This bill, I believe, imposes exactly the inequities on them that the Employment Standards Act is supposed to protect individuals from having imposed upon them, retroactively without time limitation and without consultation.

I read everywhere that we generally accept that small businesses employ the greatest number of employees and provide the most flexible and rapid growth of employment in the economy and that they deserve our support. I believe this bill is unfair to small business people. Specifically, I think it is poorly written and ambiguous. I am not a lawyer, but what I read of it, I find it very difficult to determine just who is liable and what they are liable for. I really have to comment on the bill as it is, because I am not aware of what amendments are being proposed yet.

Second, the time rules, the one-year rule in subsection 40w(1), the two-year time limitation in subsection 40w(2) and the retroactive transition rules I think are absolutely unfair. It is incomprehensible to me to imagine that if you either sell, resign or are fired from a position, you can still be responsible for its activities for up to a year. You may have left because of something you legitimately disagreed with. The two-year time limitation is from an indeterminate date, as I understand it. The subsection reads:

"(2) No proceeding...shall be commenced more than two years after the facts upon which the proceeding is based first came to the knowledge of the director."

I have no idea whether that in fact imposes any time limitation at all. These facts become the knowledge of a director who knows when?

How can we change the rules after the fact and still be fair and co-operative, really? In June 19th Hansard, Mr Waters, it may have been you who said: "Business has been aware of this since last October, that it was going to be retroactive. This is going to be no surprise when the bill is proclaimed; they have been well aware and can plan for this. I see no problem at all."

I do not know how to comment on that. It is kind of inconceivable to me, because I am in business here and how was I made aware? Were phone calls made from the ministry in October telling me this was going to happen, or were letters sent? When I found out about it on May 22 after reading an article in the paper, I wrote a letter to the minister. I have not even received an acknowledgement that they got the letter. That was over eight weeks ago. I think the bill just indicates a lack of understanding or

comprehension of the commitment, work and risk that small business people take. Small business people risk their personal savings and their assets in the course of financing their businesses, not just their time. They personally guarantee the borrowings. A lot of them do not qualify for unemployment insurance. They are not going to get a UIC credit card if the business fails. They are not allowed. They are usually the first on the job and the last to leave. Sometimes their businesses fail. Sometimes they lose their investment and their time and their houses.

None of the business people I know of ever intentionally set out to have his company fail, and I do know some who have had their businesses fail, who have lost their assets. Certainly none that I know of have mattresses stuffed with cash so that they can afford to pay fines. Some have gone personally bankrupt. They lose their self-esteem and they go on the verge and sometimes do have nervous breakdowns. Why? Because they had the bad sense to try to improve themselves by going into business for themselves.

Maybe they were not the best business people and maybe they had no business being in business and maybe they were the victims of other situations, economic situations, or maybe even there was a bad debt, a large one, stuck beyond their control. It really does not matter, the act does not differentiate.

From a personal perspective, I have been in business for over 15 years. I have met payroll for over 15 years, including last Friday. I have made every source deduction that is required on time. That is not always the easiest thing to do and those are the things that sometimes keep you from getting some sleep. Last October—October 12, in fact—I gave my own bank additional security. I placed a mortgage on my house. I encouraged my other key shareholders to do the same thing in order to secure the bank's support through last winter because we thought that would be the trough of the recession. At this point I do not think that was correct. Now the rules have changed, but the bank sure is not going to give us back that additional security.

I honestly believe the legislation as it is will make it more difficult to fund small businesses. Small businesses are traditionally funded by the banks upon the personal financial strength and credibility of the major shareholders. When the situation begins to deteriorate, you are the one they call and ask to come on down and see them and fill out a personal net worth statement and see what they can do to make sure the thing is supported. Anyone who has ever filled one out will know what I am talking about here.

I think that making these businesses a higher credit risk in this economic climate really is not what we should be doing. We need to find ways to make it easier to fund small businesses, not more difficult. The banks are willing to co-operate. Further, I think that equity investors are going to be harder to find. Whether you require capital for expansion or turnaround, I think this legislation is going to be much more difficult to obtain. I have sat across the table from venture capitalists. I have had them come into my business. They usually want to come on the board, they usually want to control it. But why should they, in this case?

I think the legislation will impair the ability of officers and directors to enjoy the very lifestyle they are working

for. I honestly feel, to anybody who has ever arranged a mortgage for himself, that if you have a contingent personal liability that could stretch into the hundreds of thousands of dollars, you are going to find it very difficult to obtain even a car loan.

The Vice-Chair: Excuse me, Mr Howes. You have been about 20 minutes now and there is a 15-minute time allotment, so could you conclude?

Mr Howes: Okay. It will be difficult to find people willing to serve as officers or directors. I have had one director basically say he does not feel he can. I even think the successful small business owner—I think this is important—who has built up a firm and is approaching retirement is going to find it more difficult to sell that company. Whether he sells it to employees who are going to have to arrange the financing or elsewhere, again, a contingent personal liability comes into play. It is going to make it more difficult to do.

On the insurance issue, I have investigated it a bit. In a lot of cases it is just not available, period, and insurance can be cancelled. We are talking about insurance for companies that are in default. It just is not there.

My final point with the act as it is, is that hidden among it all, the ministry has decided to remove the limitation on the penalty which may be ordered against an employer. For some reason there was a limit of \$4,000 before. That has been taken out. I do not know why.

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I realize the minister has heard these and many other points and he has acknowledged them, and so has the Premier. The minister has said: "We do not intend to hold individuals responsible for corporate decisions that are made once they have left that position. We have no intention of increasing liabilities for wages that currently exist under the Ontario Business Corporations Act, the Corporations Act and the Co-operative Corporations Act." Unfortunately, that is what the act does. When I asked to see the amendments that were being proposed, I was told they are not available. I think the only responsible amendment is to remove that entire section, section 12, completely. The Minister of Financial Institutions, before the amendments were even announced, said there is no liability in this legislation if they act responsibly, I guess meaning directors. That is not the way I read it at all. There is a definite liability here.

The Premier has written to a friend of mine and said, "The liabilities of directors that now exist under various provincial laws remain unchanged by the EWPP." That is true, it does not change the other liabilities, but this bill in fact increases them dramatically. I believe they are sincere. They really do not want to increase this liability. But if that is the case, how did this bill ever get there in the first place?

We are in the worst recession I have ever experienced, and I have watched the financial security that I had basically be eroded, regardless of the impact of this legislation. I feel kind of at a loss, and I am not alone. There are a great many small business people out there just like me

who are being called upon every day to provide additional security for their businesses.

The Vice-Chair: I am going to have to ask you to please conclude, because you are way over and you are cutting into the next presentation.

Mr Howes: Okay. They were not made aware of Bill 70 and I ask you to go and talk to them yourselves, and when you explain the legislation to them, engage their response. I think the legislation will demotivate people from undertaking creative business activity. I think companies will leave Ontario. I do not think it is the best thing to do at all. I have no doubt of it, because they are definitely angry.

I think new businesses will not start. I think employers will perhaps look and make sure they do not keep long-term employees. I do not know. Especially if you have somebody who is not in a very sensitive area, maybe you do not want to have a long-term employee. Maybe you will want to use contract labour, or as attrition happens and people leave for whatever reason, you will not hire. If the net effect is that we will have fewer jobs than we have now, I think we will have defeated the purpose of the bill.

My recommendations are that the bill be withdrawn as is and reconsidered entirely and that a stand-alone bill could be prepared in conjunction with the Bankruptcy Act, because I understand there are changes there. If this bill is not withdrawn, amendments should be introduced to withdraw section 12 completely and there should be a truly open process in considering legislation which can be brought forward for an employee wage protection program.

The Vice-Chair: Thanks for your presentation. Sorry, I cannot allow questions. It is just so far over at this point.

Mr Howes: I can understand that. I think we did start a bit late, did we not?

The Vice-Chair: Yes, we started about 10 after and there was 15 minutes for the presentation, so we are over at. The next presenter is sitting waiting.

Mr Howes: Well, thank you for taking the time to hear it.

The Vice-Chair: Thank you for coming in and making your presentation to us.

Mr Howes: If you ever want to make any renovations to your house, please see the local rental company in your area, and if you are in Toronto, call McLeod House. Ask for me, 742-8101. Thank you very much.

PAUL HIGGINS JR

The Vice-Chair: Mr Higgins, please. Good afternoon and welcome to our committee.

Mr Higgins: Thank you very much. Before I start, I just want to let you know that I am in the tea and coffee business, so anybody who wants to interrupt my speech to get a cup of tea or coffee, I will not be insulted.

The Vice-Chair: I am going to take the licence and be the first.

Mr Higgins: We are always trying to build consumption, so please do.

Thank you very much, ladies and gentlemen. I appreciate this opportunity. I chose to appear before you today not to

cry out that the sky is falling but rather to say that I believe the Ontario government now has a unique opportunity to show genuine economic leadership at a time when this country needs it most desperately.

After last September's election, Premier Rae went out of his way to tell all of us that he intended to forge new partnerships in Ontario society. He promised an open government that was consultative and not beholden to any special interest groups. I believe the government has a duty to stick to that promise and that we electors have an equal duty to speak out in forums like this.

Today I want to hold up my part of the bargain and make a few comments on Bill 70 and the challenge we face in helping the economy of Ontario get back on its feet again. While I am not a lawyer and cannot provide you with a detailed analysis of the legal effects of Bill 70, I can tell you a little bit about small Ontario businesses, the kind of people who take on directorships in those companies and the kind of people who work and prosper in those companies.

Mother Parker's Foods is a family-owned Canadian company that has been in business since 1912. We are a private, non-unionized company with 220 employees working in three locations in the Ontario area. Our business is of the nature of roasting, blending, packaging, labelling and distributing tea and coffee products to the grocery industry and the food service trade across Canada. Our success has come from a proud heritage of always being willing to invest in our business. We are also proud of the fact that we are able to succeed in an arena that is dominated by much larger corporations.

Our directors include my father and my brother, as well as three employees of our company. Mother Parker's has based its success on being an innovator and a good employer. We have always reinvested in the company to ensure that we remain competitive. With our new computerized process control system, we now have the most modern tea and coffee facility in North America, not just Canada, and we will continue to invest in our business and our facilities to ensure that we stay in that position.

Please forgive me if I speak passionately about Mother Parker's, but I have worked as a sweeper, loader, fork-lift driver, shipper, salesman, manager and now general manager of the company, and I am sure that our employees share my enthusiasm for the business. Perhaps the best indicator of this is the fact that so many of our employees have been with us for many years. In fact, almost half of our employees have been with the company 10 years or longer, and we have many who are in the situation of being with the company 30, 35 and 40 years.

As I said, we are not unionized, but we do have a pension plan, dental and medical plan, generous holiday allowances and an above-average wage package for workers in our industry. We have always paid the full OHIP benefits for our workers and we have often provided special assistance for specific personal problems and situations with our employees. We maintain an open-door policy with all of our employees on any issue.

I am not in the practice of making presentations to legislative committees, but when I became aware of Bill 70 and some of the proposed changes to the Labour Relations

Act which are currently being considered by the Ontario government, I felt that I should contribute from the perspective of a concerned independent businessman. I do not believe that you can really examine labour legislation without placing it in a broader economic context. One reason you hold public hearings is to examine the real effects that your proposed laws will have on people's lives.

As I was preparing my remarks on Bill 70, I was reminded of the story of the hippo who came to the wise old owl to ask his advice. "I am slow and overweight," said the hippo, "and all the animals laugh at me because I cannot keep up with them." "Then you will become slender and fast like a cheetah," said the wise old owl. "Wonderful," said the hippo, "what shall I do then?" "I just make policy," replied the owl, "I don't implement it."

Bill 70 is a perfect example of how policy decisions have results that can hurt people you are really trying to protect. This committee has before it a package of government amendments which speak chapter and verse to the need to consult with people before you take action.

1440

First, I would like to make it very clear that I do believe it is important to ensure that individuals get paid owed wages when companies go bankrupt. However, when Bill 70 was introduced, we were shocked to learn that the proposed wage protection fund would be implemented through the extension of personal liability to directors, officers, managers and other individuals on the management side of business. I will not detail the reaction of many of my colleagues, but I will say that it was hard not to see this as a vindictive piece of legislation. I am glad the Minister of Labour has now listened to the not-for-profit groups and the many others who expressed their concerns and has decided to amend the bill.

When the minister announced his proposed amendments to Bill 70 on June 5, he indicated that the changes would ensure the government was not introducing any liabilities "that do not already exist." However, as I understand it, a Ministry of Labour official will now take on an enforcer role with the ability to immediately begin proceedings against a director, even before it has been established that all other sources have been exhausted. The director would not have any of the protections of the Statutory Powers Procedure Act. This sounds like an additional liability to me.

We are also told that businesses will be given a grace period to ensure they obtain liability insurance for directors. It seems to me that it is exactly those businesses that see the most pressing need for insurance to protect directors from insolvency liability proceedings that will have the most difficulty convincing anyone to cover them.

Perhaps a greater concern is the notion we have been hearing lately that Bill 70 is merely a stalking horse for new payroll taxes to fund the wage protection fund, which now has some considerable unfunded liabilities of its own. You must realize that another payroll tax would send a great many more small businesses straight into bankruptcy and put even more individuals out of work. I am sure that is not what you want. I believe most workers would prefer jobs to an employer-funded wage protection fund.

I understand that the Minister of Labour is meeting with the federal government in an attempt to co-ordinate an effort on this issue. He has already encouraged them to bring in an even larger tax than they are already considering. Beyond the crippling effect that such a tax will have on many businesses that are already close to the line, I also believe it is fundamentally unfair to ask successful businesses to subsidize businesses that are not successful. Instead, you should be focusing on the measures that will make us all competitive. I hasten to suggest that perhaps a tax break might be a good idea.

I began by indicating that the government now has a very unique opportunity to demonstrate economic leadership. I believe the first step in that process is to listen to the full spectrum of people who make our economy function and grow. All too often, government listens to the voice of interests and not to the people.

What you can do is to forge a consensus and remove some of the barriers to economic recovery. There is no doubt that the government's current labour legislation agenda looms as a significant new barrier that would restrain small businesses and, I believe, put many more of them out of business. Would time and energy not be better spent by assisting them to fuel the economic recovery of Ontario?

If you consult with people first, I firmly believe that they will tell you they want to see economic growth, new jobs, investment in competitive technology and a well-trained workforce that can use the technology and continue the high standard of living here in Ontario. In short, they want jobs and they want to be competitive. My point is that you cannot legislate jobs and competitiveness.

If the government sticks to its announced agenda for labour reform, this committee will be meeting this fall to review legislation to amend the Labour Relations Act. You would be examining a number of issues which have been put forward by the Ministry of Labour, and I can assure you that you are already having an impact on business decisions made in this province today. Our company recently spent much time and effort reviewing the potential of setting up in Buffalo, and I can assure you it is a very attractive scene. This is the first time in our company history, which is almost 80 years, that we have even considered such an act.

For the men and women making those decisions, it is difficult to understand how any of the following proposals could inspire them to consider further investment in Ontario:

Requiring non-unionized employers to turn over employee lists for the purpose of assisting unions with a certification drive and allowing unions to organize on company property. Not only does this violate the freedoms of small businesses to operate a safe and productive workplace, but it violates the privacy of workers who may not wish their files to be distributed to unknown third parties.

Provisions for automatic certification, fluid bargaining unit compositions and new provisions to prevent employers from communicating with their employees during a certification drive. These proposals are insulting to employers as well as employees, as they undermine fundamental freedoms of speech as well as the freedom to make independent decisions.

Prohibitions against the use of replacement workers during a strike and provisions to allow for sympathy strikes and secondary picketing. Our priority, for all of us, should be to open workplaces, not to close them down.

Provisions to prohibit employers from communicating with employees during a strike. Employers should have the freedom to explain their position to the workers, just as the workers should have the right to hear it. How can this provision ever be reconciled with the Premier's call for partnership?

Extending successor rights so that unions will follow companies and obtain automatic bargaining rights with non-unionized contractors. All I can ask is, will the unions follow the companies to the United States? Because that is where they will be going to find employed workers.

I make these comments because I hope and believe that it is not too late for this government to reconsider its agenda and focus on the real priority, which is economic recovery and prosperity for all of Ontario's people. I am a Canadian. I love this country. I love Ontario. It is a great place to work and it is a great place to live. I dearly do not want to be forced to look at alternatives. I believe that if the government consults with the people of Ontario, it will discover that economic growth, competitiveness and new jobs are the real priority.

Mr Offer: Thank you very much for your presentation, Mr Higgins. On page 3, you say you "believe that it is important to ensure that individuals get paid owed wages when companies go bankrupt." I was wondering if you might expand on that so I do not draw any improper conclusions. Does that mean you feel there is some need in principle that either the fund, as is created here, or possibly through directors' liability, protect those particular wages in a bankruptcy?

Mr Higgins: What I can tell you is that I do believe that should in some way, shape or form be taken care of. Unfortunately, I have put all my efforts and time into running business and really have not been able to come up with solutions. I certainly will give it my best thinking over the next few months, and if I come up with something, I will be happy to pass it on to you.

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Mr Offer: I appreciate that.

In the word "wages," do you include the wages actually owed, do you include vacation pay, do you include severance, do you include termination pay?

Mr Higgins: I certainly include wages and benefits and vacation, because the individuals have already worked towards that, fulfilling their commitment as far as work is concerned. Termination—obviously it is not a very good thing for anybody to go out of business. Both the employer and the employee are in a difficult situation. I have not really got a conclusion on whether that should also be included, but it certainly should be considered.

Mrs Witmer: That was an excellent presentation, Mr Higgins. I appreciated the points that you raised. You talked about the labour legislation that is being brought forward, and of course Bill 70 is just one and Bill 116 and now we are looking at the other revisions.

You have taken a look at Buffalo. How many other companies and individuals are you aware of, among the people you know, that are taking a look at the same thing? Is it quite common to be considering this?

Mr Higgins: Without question. I personally have one friend who is in the trucking business who has already made his commitment to set up shop in the US. He will still have business interests here, but he is very nervous about the future. In his business he cannot afford to have all those constraints if he is going to compete for trucking business on both sides of the border.

Mrs Witmer: What is it basically that is encouraging people to look south of the border?

Mr Higgins: I would say it is the changes to the labour laws, which will in my opinion just put handcuffs on people to stop them operating effectively and efficiently. I cannot really see the purpose there because we already have very comprehensive laws in place to protect the employer and the employee.

Mr Klopp: You brought in Ontario labour relations and you brought out some points. However, I guess maybe that has been part of the problem. Are you aware that there are also other proposals that the so-called business side gave to the Minister of Labour? Are you aware of them?

Mr Higgins: I was aware that there were some suggestions. But to be quite honest with you, getting hold of the information is somewhat difficult and some of it is very confusing, so I cannot give you an answer that, yes, I know all of the details.

Mr Klopp: You have only shown three or four points in what was just being talked about and not shown the other side. As a business person I think you should try to look on both sides. As you pointed out, we are as a committee, I understand, going to be looking at those things. I think if you truly care about Ontario you should probably try, as I do, to look at all sides. I believe the minister did ask labour and management to come up with some ideas and he is going to look at them, and this is part of the labour one. The business community, I believe, has a report. I think the labour group actually grabbed it and is going around telling everybody that the minister is going to do all those things. So I hope you look at both sides, because that is what we are going to do. I hope you can follow through too, to help us do that. But this is not what we are doing today; we are talking about Bill 70.

Mr Higgins: I am certainly open to looking at both sides. Obviously with a 15-minute presentation in which I really was designated to talk about Bill 70, I did not feel I should impede upon the opportunity to talk or take it any further.

The Vice-Chair: I am afraid I am going to have to interrupt again, as time is marching on. Thank you very much for your presentation.

Mr Higgins: Thank you for your time. I appreciate it.

The Vice-Chair: It will help us with our deliberations.

ONTARIO CHAMBER OF COMMERCE

The Vice-Chair: The next group is the Ontario Chamber of Commerce. Would you please come forward and—I guess it is not too difficult. I was going to say “and identify yourselves,” but I think that is fairly obvious.

Mr Corcoran: You can figure it out.

The Vice-Chair: It has been a bit of a day.

Ms Barsoski: I am Tom.

The Vice-Chair: Whenever you feel comfortable, just start your presentation, please.

Mr Corcoran: Good afternoon, ladies and gentlemen. My name is Tom Corcoran. I am the president of the Ontario Chamber of Commerce. With me is Diane Barsoski, who is the co-chair of the employee-employer relations committee of the chamber. She is going to speak to the specifics of Bill 70. I would just like to introduce her comments by giving you some of the credentials for our even being here in the first place, and second, give you our view on the process of Bill 70 today.

From a credentials standpoint, the chamber of commerce represents 165,000 members across the province. We operate through community chambers and boards of trade. There are 65 of them that we deal with directly, in each corner of the province. The members represent every size, shape, sector and nationality—and, I will add quickly, some are unionized and some not. So our credentials, I feel, allow us to represent a significant piece of the business view that you might not normally hear, that of the small and intermediate business person throughout the province.

Our view on the Bill 70 process to date, which has been aptly, I think, described by the previous speaker as an example of the consultative process, is one about which we would say to you, do not confuse the gathering of a lot of information from a lot of different groups—and, I will add, special-interest groups being some of them—with the consultative process. You are almost doomed in doing that and then going into a back room and hatching something that you think will solve everyone's problem. You are doomed to having built-in critics, probably on both sides of the ledger. Incidentally, we did participate as a group that provided input early on in the process.

The initial legislation, though, seemed to ignore all of the issues we had raised with potential labour code amendments. The example I would hold up would be the officer liability. The subsequent amendments have addressed many of these very same issues and, as I am sure everyone will be quick to point out, have resolved at least a portion of the issues that were raised by the business community beforehand.

In the current business environment the Ontario Chamber of Commerce sincerely believes that our members and our government should be focusing their energies on economic growth, economic recovery and the creation of jobs. Our members should be getting on with the business of running business and we should not be involved in a debating society around intensive and extensive labour reform.

If there are further rounds of labour reform, I hope, as a group of parties concerned, that we can take a lesson from the Bill 70 process. I hope we can avoid the pain of having

to deal with the announced legislation and the cost, both in terms of time that it has taken afterwards to deal with the issues and argue them and then have them amended, and the very significant messages that are communicated to potential investors who do not question the fact. They see very clearly the high-profile initial reaction to the initial legislation, and they will never see the amendments that are buried in the deep pages of the newspaper afterwards. We think this is the wrong message to be sending at this particular time to the business community at large and to potential investors in particular.

With that by way of introduction, I will defer to Diane to speak to the specifics of Bill 70.

Ms Barsoski: Good afternoon. I will be brief. We have essentially 10 points to make, six of which appear to have been addressed directly or indirectly by the June press release. So I am going to simply list those six and spend a few minutes on the other four. You have a brief written submission. I am not going to read it. My remark in many cases will be in addition to the submission.

1. Starting with the six, we cannot support strongly enough the exclusion of officers of a company from personal liability. Many who would be deemed officers are really just employees and not extremely highly paid at that.

2. We support the limitation of directors' liability to wages and vacation pay and not severance, for reasons which will cover in part later.

We have a concern relative to clause 40s(3)(d). Where subsection 40s(3) discusses directors' liability and what they could be liable for, ie, wages, vacation pay and not severance, clause (d) says, “such additional amounts as may be prescribed by regulation.” Our concern is that, first of all, we have no idea of what that may mean and we would rather the legislation be reasonably complete on its face and not leave sort of an open door. We do not know what might flow out of that door.

3. We support the limitation of directors' liability to the term of their tenure.

4. We support the limitation of directors' liability to wages and vacation pay, not including other matters which might flow out of the Employment Standards Act, equal pay or violations of Sunday shopping laws and things like that. One of the reasons is, few directors, if any, would be involved in that kind of detail in the operation, so the would have had no involvement at that level of minor sort of compensation issues. We support the position that directors of not-for-profit companies be exempted. Obviously there is some current liability and we accept that.

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The four points I want to highlight are these. Subsection 40s(2) states, “Despite subsection (1), the employer is primarily responsible for an employee's wages but proceedings against the employer under this act do not have to be exhausted before proceedings may be commenced to collect wages from officers or directors under this part.”

The employer is primarily responsible but even if that is not exhausted, proceedings can be commenced against directors. When I look a little more carefully at the bill I see that subsection 40u(1) says, “If an employment standard

officer makes an order against an employer...he or she pay make an order to pay" wages "against some...of the directors." So it sounds to me like you can make an order against the employer, not even have commenced much proceedings or know whether those are collectable or not from the employer and, almost simultaneously but as step 2, make a proceeding against directors.

Of course there are all sorts of appeal procedures and upon, all of which for a director would require legal counsel, because a director of a company in terms of exercising his or her right under this act is not going to represent him or herself. So our concern is that prior to even knowing if these moneys are collectable from an employer, directors could be involved in some extensive legal complications.

The second issue along the same lines is subsection 4(4). That is the section that says, "If a judgement has been obtained against the employer..." and it goes on to say a "director from whom the program administrator has recovered..."

That contemplates that a judgement has been obtained against an employer but a director has already paid, and it gives the procedure by which the director can then get his or her money back. But you know, the director may have already undergone some extreme financial hardship. We have to remember that directors of corporations, according to Peter Cooke of the Globe and Mail, make on average about \$12,000 a year from their directorships, and I think that sort of after-the-fact remedy could lead to substantial unfairness. Therefore our point is that we think all the action against an employer ought to be exhausted before we come after directors.

Our second point relates to the conceptual underpinning of the legislation. As we understand it, if money cannot be recovered from the employer or directors then the funds would come from consolidated revenue. Indeed severance pay, even under Bill C-22, can only come from employers or the fund, because it does not come under Bill C-22 and it does not come from directors. In the case where we are taking money from taxpayers via consolidated revenue the concept of minimum safety net should apply. It is one thing to have certain definitions for recovery from employer and directors; when we are starting to talk about taxpayers, all of Ontarians paying, we think there should be a concept of minimum safety net, i.e. the provisions should be less generous. I am going to tell you why.

Under wages, we think in this case—and I am talking consolidated revenue fund—that wages should include weekly regular pay plus commissions. We would actually not recommend paying vacation pay out of the fund, and my reasoning is this. Say there are two employees on the point of closure. One may have taken all his vacation time; one has not. They are on an equal financial footing in terms of dollars having come into their pocket. One got paid for working, one got paid for part work and part vacation. The problem on the closure is that the person who did not take vacation in retrospect is the lucky one because he will still have some money owing to him for unused vacation.

We think when we are talking that the taxpayer is shelling out the money, that is not necessary. However, if one says,

"No, we have to pay vacation pay out of the fund," we would say, "Pay it in accordance with ESA entitlements." Here is the reasoning. Certain employers—mine is one, for example—have very generous vacation provisions and we have negotiated these for our own purposes and reasons. For example, with my employer we have five weeks' vacation after 13 years. The Toronto Star has five weeks after 10 years. You are talking about 10% vacation pay, not 2%, 4% or 6%.

Why should Ontario taxpayers pay out vacation pay at such a premium and indeed, in these cases, one that few of them enjoy? The taxpayers could be paying higher vacation pay in a payout situation than most of them would earn themselves. So we say, "Pay vacation pay in accordance with ESA entitlement." The same thing applies to holiday pay.

For overtime, again we would recommend that in terms of a minimum safety net we not consider premium payments such as those out of the consolidated fund. If we are going to, we say, "Pay on the ESA entitlement." For example, with my employer under certain circumstances employers are entitled to four and a half times pay for overtime. Why? Provision negotiated, we all know, in a different era, high leverage, etc. Again, few Ontario people would be entitled to that kind of a premium, so why should they fund that high a premium? We say, "Pay every time in accordance with employment standards entitlements."

Termination pay and severance: Here it says that the minimum safety net concept would be unemployment insurance. Our reading of the bill suggests this: Suppose that someone is entitled to six months' severance under ESA and suppose that, in accordance with moneys available and able to have been recovered, a person already has received from the employer five months. Our reading then is that out of the fund could come the top-up of the extra month such that the ESA entitlement would be fulfilled.

The irony here, though, is that once the person receives that extra month there is every probability the person is already working. In that case the severance payment—and indeed many severance payments if they are fairly extensive and someone gets a job fairly quickly—is a windfall gain, i.e. you can use it for your mortgage, use it for something else, you have certain entitlements to lock away, to put tax-free into a retirement savings plan. Why should the taxpayer fund that extra gain, is our point? When the top-up is paid the person might be working already. What I am trying to establish is, when we are talking about taking money out of consolidated revenue or, worse, payroll tax, we say, "Pay a minimum safety net." UI provides the safety net, while this is debatable in some cases, not providing too great a distance then to look for work.

In any event what we have proposed in the brief is—I have not gone through any of that kind of detail in the brief—a cap of \$2,500 on payment.

Two more points: We vigorously oppose any move to fund this program by yet another payroll tax. If you would add up, and I have not for today's purposes, all the taxes that have hit the employer in recent years, we are just really saying, "Enough." To make the alarmist statement, how many disincentives can we give business for them to still want to locate here or invest here?

Our final point relates to Bill C-22. It has been suggested to me, and I do not know the answer to this, that as things stand, it is not clear that there might not be double payment of recovery. Hopefully, that will be taken care of. That would be absurd, of course. But our position is that first recourse should be to C-22, and to Bill 70 only where the funds are not otherwise recoverable, either because of the subject matter, ie, it is not a bankruptcy, or the amounts.

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Mr Corcoran: Not attempting to open up the previous presenter's comments, but rather to anticipate a question on the management report that was prepared and submitted in combination with the labour report, I will just close by saying that I personally wonder how fair it is to ask the Mr Higginses of the world what they think of the management reports, because once they have finished reading one, there are probably a dozen other reports.

This is an industry that is built up in terms of the informed arguments around the subject. The Mr Higginses of the world, I would like to think, are running their businesses and they are relying on the Ms Barsoskis of the world, who have spent some time reading both sides. The only comment I would make on the management report versus the labour report is that the reason there is so much focus on the labour report is because that is the one where the minister was quoted in the press as saying he supported the positions outlined. I think it is very important that the legislative process not be confused in the eyes of business to accomplish what the arbitration process has failed to accomplish or has rejected. That concludes our presentation.

Mrs Witmer: Thank you very much for your presentation. I am wondering if you have any comments about the fact that Bill 70's maximum payment will be changed by regulation.

Ms Barsoski: I did not notice that, to tell you the truth.

Mrs Witmer: The public really will have no opportunity for input. It can simply be changed.

Ms Barsoski: Then my comment would be identical to the one I did pick up, whereby the wages could be changed by regulation. Let's know what we are getting here. Let's not leave doors open so later we have no idea. I really feel very strongly about that.

Mrs Witmer: Okay. The other thing is, I do not know what investigation you have done, but in trying to obtain insurance for directors, it is my understanding, in the work that we have done, it is going to be extremely difficult for those companies that are already on the verge of bankruptcy. They are the very ones that are going to need the protection. I just wondered if you have had any reaction from your membership as to some of the problems that could be experienced in obtaining insurance for the directors.

Ms Barsoski: I do not know that we have had a reaction. We have tremendous and utter panic, and I think "panic" is the right word when you realize that what we are talking about is people, and not necessarily fat cats—I think that is sort of a stereotype in this recession—people who have mortgages and are not a special breed. They know that by

virtue of having accepted a directorship their personal financial life could be ruined. You can imagine the reaction. As to the specific issue, I do not know if we have any research on that.

Mr Corcoran: No, we do not have any research.

Mrs Witmer: I know we have done some, and apparently it is almost going to be not there for the companies that need it the most. That is the big concern.

Ms Barsoski: Then we came here alarmed and leave more alarmed.

The Vice-Chair: Is that it, Mrs Witmer?

Mrs Witmer: Yes, it is.

The Vice-Chair: I have been trying to set up a rotation so that people come first, second and third. Do you have anything that you want to ask?

Ms S. Murdock: I just actually wanted to make a couple of comments. I think it is important in terms of the possible negotiation with the federal side that was discussed yesterday by both the minister and the deputy minister, where they are still negotiating, what their plan would be. What the deputy suggested yesterday was that the administration of the wage protection, in conjunction with whatever Bill C-22 ends up to be—having said that, given that the feds have promised some kind of wage protection legislation for 25 years and still have not come up with anything—the negotiations are on the basis that it would be administered through Ontario, with what was owed on the bankruptcy and insolvency coming from the federal side and being paid back into the Ontario plan. So we would top up what the first recourse would be. That would be the plan, but there would be one administrative, facility for more efficiency. That, I think, responds to the one thing you said.

The other thing is your cap of \$2,500. I have some difficulties with that because statistically, and from what the employment standards branch at present had in terms of information in situations where closures have occurred, either because of bankruptcy or otherwise, it is about 66%—64% I think—on bankruptcies. The rest are other kinds of closures, leaving, walk-aways or whatever, and the employees are left. We have got about 16,000 of them right now sitting waiting for some kind of money. The cap is \$5,000, and it has been determined that the average would be about \$4,200, with about \$2,000 of that coming from the federal side. Really what the wage protection plan would be protecting would be your severance and termination.

My question in terms of severance and termination would be: Why do you feel that that is not owed money?

Ms Barsoski: I take the view on severance and termination that the underpinning and the concept behind historic negotiations—I am obviously a negotiator—was a stopgap. So it was, "My God, someone will be on the street and have no income," as opposed to deferred income. If you believe that it is sort of an earned entitlement, which I do not, then you will take a different view from me. If you believe that the severance provision is designed as a protection from loss of income, then you can understand my view. But I do know there are two ways of looking at it.

Ms S. Murdock: In the example that you gave, the employment standards officer would go in and look at the situation. If someone had used four months' or five months' allowance, the employment standards officer makes a determination as to what is owed. If the amount for that year has been used, then it is no longer owed. Do you see what I mean?

Ms Barsoski: I may be incorrect here, but what I thought was, given the definition of severance and termination—I always forget how those two interrelate. But let's say the maximum employment. Because of length of service, I am owed six months' severance in accordance with the ESA provisions. It does not matter whether I used it. At the point when I left that employer, I should have been given six months, because that is my ESA entitlement. My concern was that, suppose the employer had been otherwise able to pay or paid me five months—my example was that six months, I thought in this reading, would still be owed to me because that conforms to the definition of severance under Bill 70. No matter what, I would get my extra month. Why are you shaking your head?

Ms S. Murdock: Sorry, it is just that the application—

The Vice-Chair: Excuse me, Ms Murdock, but could you make this point quite concise and clear, because Mr Offer has some questions.

Ms S. Murdock: The employment standards officer would go in on every application from an employee and make a determination as to what is owed that employee. So if the employee had already used up or had not earned that whatever time on the date of closure, then the determination would be made by the employment standards officer. I will talk to you out in the hall.

Ms Barsoski: Yes, because I think we are talking at cross-purposes. Okay.

The Vice-Chair: Are you both happy?

Ms Barsoski: I think we are both right.

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Mr Offer: Thank you very much for your presentation. I would like to continue on this line of questioning. I do not know that the issue is whether severance or termination is due and owing. I think it is clear that in any one particular circumstance or instance, it could readily be determined whether severance and termination are due and owing. That, to my way of thinking, is not the issue. The issue is that in the event that dollars are owing on account of severance and termination, and under the amendments to the legislation they cannot be recouped from directors, should they then be paid out of the fund which is, in essence, taxpayers' dollars. I think, in principle, that is the thing we have to grapple with.

Ms Barsoski: You have stated my point exactly. Our position is no, when you are at the point of asking taxpayers to provide protection, then talk minimum safety net, and minimum safety net is provided by UI. So we say the fund should not provide severance or termination pay.

Mr Offer: We have the parliamentary assistant and ministry staff here, and maybe I did not understand it correctly, but generally I understand the process to be, where

there is a business which has difficulties, an employee can then make a claim to the employment standards branch and have it determined how much is owing to that employee on account of wages, vacation pay, termination and severance. It is my understanding that when an order is issued and no review or appeal has been levied or filed, the branch will pay out the money to the limit, and then they can go after the employer. They can then, without exhausting all the remedies, go after directors or whatever; it is up to them. The reason I bring this up is because I think I heard you say that before it comes out of the branch they have to go through the employer and the director, and I do not think that is exactly how it works.

Ms Barsoski: No, but I see your concern, and the answer is that if we say at the point when it is going to end up in the final analysis that no reimbursement is paid out of consolidated revenues, we say then a more stringent definition should be applied. How can that be, since the fund is already paid out and you are talking about trying to get that money back from the liable parties? The only sensible answer I can give to that, and we thought of that, is that at the first instance you pay out on the minimum, and if recovery in excess of that minimum that has been paid out materializes, then a second payment is made which pays the extra, because you can get more from the employer. That is my answer to that.

The Vice-Chair: I would like to thank you very much for your presentation, and it will definitely go into our considerations over the next few weeks as we work this bill through this section.

CANADIAN AUTO WORKERS

The Vice-Chair: Our next presenter is the Canadian Auto Workers union. Mr Nickerson.

Mr Nickerson: My name is Bob Nickerson and I am secretary-treasurer of the Canadian Auto Workers' Union, and with me is Lewis Gottheil, who is our counsel. We want to make sure the committee clearly understands that the process this government has put into place, based on consultation, we think is very long overdue and is a process that we think is going to work for the future for legislation.

Finally, I think the point has to be made that a number of briefs have been presented here on behalf of individuals who happen to have positions with management, directors, etc, and in corporations. We happen to be an organization that represents the workers for these organizations, the workers who have gone through a lot of the throwbacks of losing their vacation pay, the moneys they were owed from that employer, and vacation and severance pay. A lot of this had taken place long before the severance pay provisions ever came into place.

The other point I would make before we present our brief is the fact that we as a union have been involved in making presentations to the federal government for the last 20 years about changes to the Bankruptcy Act, to no avail. I know I have personally written at least 10 letters to 10 different ministers asking for changes to that legislation, which I do not think has been changed since 1918. We do not bother writing any longer, because every time we go forward a few steps, for some reason there is a backward

step and somebody decides not to go forward with the legislation.

We are going to touch on that somewhat in our brief today as well. I would ask Lewis to read our brief and then we will be open for any questions. I may add a few remarks at the end.

Mr Gottheil: The National Automobile, Aerospace and Agricultural Implement Workers Union of Canada, commonly known as CAW, is pleased to appear before the committee today to comment on Bill 70, the employee wage protection program.

As you may know, the CAW represents over 125,000 workers in Ontario in a wide range of industrial, service, office and technical occupations.

Unfortunately, we and our members have had a long history of being familiar with the circumstances which attend business and corporate failures and the subsequent impact on our members and their families. Canadian and Ontario workers are currently faced with unprecedented economic insecurity. The enactment of the free trade agreement with the United States, the proposals for a North American free trade agreement, the continued rash of mergers and rationalizations and the increased globalization of many industrial sectors, along with the continuation of the misguided federal policies of high interest rates and an overvalued dollar and the virtual abandonment by the federal government of its responsibility for a secure safety net, all of these factors together have resulted in severe social and economic penalties for workers and their families in this province and across the country.

It is all too depressing to once again have to recite to you the statistics associated with this made-in-Canada recession. Business bankruptcies have increased by 73% in Ontario in 1990, personal bankruptcies are up by 83%, there has been a loss of over 180,000 jobs since June 1990, and there were over 95,000 manufacturing jobs lost in this province in 1990. There is a current unemployment rate of 10.2%, with over 544,000 persons unemployed, and there are the extraordinary increases that we have seen in welfare cases. Behind these impersonal statistics, however, there exist real human tragedies and real human hardships.

Laid-off workers suffer from an immediate income loss. In addition, benefits such as medical and pension plans are likely to be lost or reduced. When alternative work is found, it is often at significantly lower pay with fewer benefits. There may be, along with these factors, significant relocation costs.

In smaller communities, a large closure will have a relatively large economic impact and will strain the capacity in that community and the capacity of all people to respond to social needs.

For individuals, the loss of income and benefits is painful enough, but perhaps equally important is the loss of worth felt by those for whom a job defines a large part of their lives.

In our society there is no mechanism for ensuring that the social and public costs of closures and layoffs are appropriate considerations in corporate decisions. This applies equally to companies that decide to close in order to pursue higher profits somewhere else, as well as to financial

institutions that make decisions that result in bankruptcy or receivership. It is against this background and in this context that Bill 70 has to be and must be assessed.

In 1990, 51 CAW workplaces, with over 5,000 employees, were closed down, the majority of them in Ontario. So far in 1991 we have had 28 workplaces either close or announce their intention to close, affecting approximately another 5,000 workers, again mostly in Ontario.

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In several of these instances, firms have either gone bankrupt or have entered into receivership with substantial sums of money being owed to their employees. A partial list—and this is just partial—includes Forest City International in London, Elan Tool and Die in Chatham, Bourque Consumer Electronics in Toronto, IBL Industries in Hamilton, V & V Stampings in Burlington, Manutec in Brampton, Wyleside Products in Brantford, Rolmaster Conveyor in Kitchener-Waterloo, and Brant Castings, Windsor Bumper and Welles Corporation, all in the city of Windsor.

It may be instructive to recall the history of earlier legislative changes. The wave of plant and office closings in the late 1970s and early 1980s led to both political and union pressures for legislation. There were, in fact, some beneficial changes resulting in the establishment of a statutory right—and I underline that—to severance pay and pension protection. We should remember, however, that before any Ontario workers became entitled to severance pay, many thousands of workers lost their jobs and received no severance whatsoever. It is disappointing as well to note that no other provincial jurisdiction has seen fit to follow Ontario's lead with respect to establishing a statutory right to severance pay.

At that time, in the late 1970s and early 1980s, we were told that legislating severance pay would mean plant and office closures and a loss of investment and jobs. Instead, in the 1980s we enjoyed a generally good period of growth in both investments and jobs. When critics of this bill predict that it will result in a loss of investment or cause firms to move their operations and for these reasons it should not become law, they are implicitly saying that as a society we must continue to force workers to bear the costs of unpaid compensation, and that their statutory rights should only exist in theory and that their only recourse be to look for another job. We do not believe that that is an appropriate response in these circumstances.

Let's be clear about what the employee wage protection program is intended to accomplish. It establishes a mechanism and procedure for ensuring that workers are paid at least part of their unpaid wages, vacation pay, termination pay and severance. The bill only deals with ensuring that workers get what they are entitled to receive by way of statutory right.

Indeed, if I might just divert for a second from the brief, the Employment Standards Act makes clear, through its various provisions, that we are dealing in that act with minimal guarantees for workers, minimal standards for workers that have to be recognized and, in a sense, a constitutional system of rights for workers as a minimal guarantee.

For many years we have witnessed the absolutely unacceptable spectacle of workers who have been given entitlement to both termination and severance pay by an act of the Legislature, in recognition of their investment in their job or occupation, but who have not been paid one cent because of the inability of the employer to meet its obligations. We simply cannot continue to have legislative protection for workers that does not have any practical application in cases where companies become insolvent or bankrupt.

Much as we may deplore the causes of such business failures, there should be no argument about the right of a worker to his or her compensation for work already performed. The hardship which accompanies the loss of a job should not be compounded by a failure to pay moneys already due. The same must be said for a worker's statutory compensation, namely, termination and severance pay.

We applaud this government for taking such timely action to help workers attain what they have been promised through contracts and through legislation. This is a welcome difference from the sorry spectacle of what can only loosely be referred to as reform of the federal bankruptcy legislation. For many years we have witnessed successive federal ministers make hesitant moves to improve conditions for workers and then subsequently decided to back off from even minimal improvements.

Finally, the federal government has introduced amendments to the Bankruptcy Act. Unfortunately, these proposals will not address the real needs of workers. The scope of the proposed federal changes are simply too limited to adequately deal with the severity of the problem. In the first place, the \$2,000 maximum is too small. Second, we are concerned that the federal scheme will only cover 90% of any claim to the stated maximum. As well, neither severance nor termination pay appear to be covered by the federal proposal.

Having said that, we believe there is an opportunity for the provincial and federal governments to harmonize their wage protection schemes in a manner which will increase the protection available to workers in Ontario beyond that contained in Bill 70. In other words, the protection offered by Bill 70 should be in addition to whatever protection is available under federal legislation. We would also urge the provincial government to continue to advise the federal government to change its absurd policy of deeming severance pay to be earned income, and thus delaying or effectively denying UI benefits to many workers. We understand that payments from the employee wage protection program will be treated in the same way, and we again support the provincial government's intention to seek modification in the UI regulations.

We have several comments which we wish to make with respect to the details of this legislation. While we recognize that certain limitations are necessarily required, we are concerned that the restriction to a maximum of \$5,000 under the program will result in significant hardship and inequity to a large number of workers.

For example, some employees at Elan Tool and Die in Chatham are entitled to as much as 20 weeks of severance, which would be about \$12,000. They are unlikely to collect anything from the employer and will only be eligible

for 42% of their severance pay. In addition, many of these workers are also entitled to termination pay, which in some cases amounts to another \$4,800. Having exhausted the maximum of \$5,000, it is again unlikely that any more will be recovered for such employees, leaving them with only 30% of what they are entitled to by statute.

Therefore, we urge this government, once this legislation is passed, to carefully monitor the degree to which it covers workers' total entitlements in order to ensure that the maximum benefit payable is raised, if necessary, as quickly as possible. We already know that over 13,000 claims have been filed with the employment standards branch of the Ministry of Labour since October 1990, and this gives us an immediate opportunity to assess the adequacy of the proposed maximum benefit.

We also recognize that the government has responded to the concerns raised about the impact which the original legislation might have had on not-for-profit organizations as well as on officers of companies. While we acknowledge that there are some legitimate concerns in this respect, we also note, as have others, that currently directors of many not-for-profit organizations are already liable for a specified amount of unpaid wages. We urge the government to continue to look for means of extending liabilities for unpaid compensation in cases where principals of companies, whether they be directors or officers, manipulate corporate and business affairs in attempts aimed solely at avoiding their responsibilities to their employees.

We also believe that the government should give serious consideration to an alternative form of providing the necessary funds for this program. It seems to us to make much more sense for there to be a direct payroll tax levied on employers rather than generating these funds from general revenues. The responsibility for ensuring that employment-related compensation be protected should fall directly on all employers rather than taxpayers in general. In that context, we note that the federal government program will be financed by a payroll tax on employers of .024% of insurable earnings.

We are especially pleased that the minister has introduced an amendment to the appeals procedure. While the original legislation required a hearing within 45 days of filing, the proposed amendment will require impartial referees to make their decision within 90 days after the initial hearing. This should go a long way towards ensuring that the regulatory framework for this legislation will result in timely responses.

In conclusion, we support the principal aim of Bill 70, which is to ensure that workers are compensated for their work and are provided with their statutory rights and, I should add, minimum guarantees under the act.

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Mr Nickerson: I might just add that the protection that has finally come forward in this legislation for workers certainly is long overdue. It is more or less a regulation that is supplementing the separation pay that is in place. We have had nothing but problems with employers, trying to get the money for the workers once this thing has been closed down and once the plant is gone and once the directors have left the country.

A lot of these decisions, by the way—and I have heard some reports earlier—are made in the United States. They are not necessarily made in Canada by these corporations. They are not made in Toronto or in Montreal. They are made in other countries and affect employees in Ontario in particular. That is the result of what we have seen recently with a lot of the plants that have closed owing to the recession we have just gone through.

I want to stress once again the important part of the bankruptcy legislation. When we deal with bankruptcy, because it is federal legislation, certainly the bankruptcy legislation should take priority, so the \$2,000 or whatever the amount of money is that finally ends up in the bill that is passed, should take priority and then this should be over and above that legislation that is in place when it comes to bankruptcies.

Mr Dadamo: I want to mention that there is a clipping out of the Windsor Star that I received this afternoon that directly relates to our topic here this afternoon. It says: "About 20 workers claim they are out of a job. They fear they will never be paid money owed to them after a Windsor robotics company laid them off and ceased production last week."

They spoke to a couple of employees who worked there. Forty-eight-year-old Neil MacDonald said the company owes him about \$3,000 at this point. They fear now that they are not going to get any severance or vacation pay, etc. Andy Flannigan, a production worker, says the workers will probably look for relief in the province's newly announced employee wage protection program, which covers workers' severance when a company goes bankrupt. He says some of the workers have been employed there since the plant opened about 12 years ago and that the layoffs come as no surprise.

Do you think the \$5,000 cap we are addressing and speaking about covers things like severance and vacation pay? Do we go quite high enough?

Mr Nickerson: If you have a situation where you are talking about 12 years, you might be close to the \$5,000, but in most cases when we are talking long term, anything over 15 weeks, besides vacation pay and the wages that are owing to the employee, \$5,000 will not be adequate. It will not cover it. We gave you an example in our brief.

Mr Dadamo: No, and I live it at home. We have talked about this with other people. For someone with 20 or 25 years and more, that \$5,000 just does not seem to cut it.

The Vice-Chair: In this particular case we have about five minutes for each party, so if there is anyone else who wishes—

Ms S. Murdock: It is not in relation to your brief actually; it is in relation to other jurisdictions and legislation.

Part of the thing we have been hearing, particularly this morning, was the lack of consistency for Ontario having this kind of legislation where we are leading the pack and that we are giving businesses problems in terms of having this kind of legislation in place. I was just wondering. You probably have some knowledge of other jurisdictions and other countries that would have legislation that would be similar or even more stringent. Do you know of any?

Mr Nickerson: Ironically, I was watching TV at lunch today when a program came on that was talking about investing in Italy. The first thing they were talking about was the fact that what you have to do as a business person is ensure that you make the right contacts with people in that country, because once you hire the employees, you do not have a right to discharge them. You cannot terminate the employees unless you have a large amount of severance pay that you are going to have to put away for each and every one of those employees.

We went through the whole question of dealing with the aerospace industry, especially the two companies that want to buy de Havilland. Both of those companies made very strong point with us in the hearings we had during that presentation that if there were going to be layoffs, they would be looking to Ontario because in France they are obligated to continue employment for the workers at those plants. They cannot lay them off. They have guaranteed employment for workers in those countries. There is no way you can get at that kind of situation, because the workers are guaranteed employment and they are not going to be laid off.

We know that when they had a strike that took place at Airbus, when they shut down the main plant in France, they did not lay the workers off, because even with a strike taking place in another country, they could not lay those workers off, by the law.

They are going through the same process under the new provisions in Europe—you can speak to that—which they are now putting into place. All this legislation is going to guarantee these workers their incomes.

Mr Gottheil: If I can follow up, the ministry issued a discussion paper in December 1990, so in terms of the information I give credit where credit is due regarding the research. In response to the question of which jurisdiction currently operate wage protection funds, the discussion paper indicates that throughout Europe, in the majority of the European Community jurisdictions, there is a wage protection fund in place. In Norway, France, West Germany, many, these countries that I have just mentioned set up their programs in the early 1970s, all the way to Greece in 1981, Iceland in 1984 and Portugal in 1985. They set up wage protection fund programs.

In Canada there are some programs already in place. For example, in the Quebec construction industry there is a wage protection program, which by the way is funded through an employer payroll tax. There is legislation in Quebec but not yet proclaimed, for a wage protection fund for the industrial sector. I underline that my understanding is that as of yet it has not been proclaimed, but a general wage protection fund has been set up under the administration of the labour standards commission.

I think it is fair to say then that many other industrialized jurisdictions in what we might call the west have these kinds of programs.

Mr Offer: Thank you for your presentation. I think it is good that the committee periodically throughout the day is reminded that what we are talking about is people who are no longer working, who are owed some dollars, and

through the legislation previously in existence are entitled to certain dollars. What we are grappling with is how we can make this bill as good as it possibly can be in the time we have available to us.

I would like to ask a couple of questions dealing with your submission. It states on page 4—I am really just asking for full clarification on this—"The bill deals with ensuring that workers get what they are entitled to receive by way of statutory right." Do you see, as a result of that statement, that the bill is somewhat limited or flawed in that it does not call for full entitlement of employees to what is their statutory right, in your own words?

Mr Nickerson: Let me understand your question. Are you talking about the present law that says severance pay is paid at a certain point? Is it that bill or this bill?

Mr Offer: No, I am talking about this particular bill. This bill has a cap of \$5,000. There is a statutory right which you have alluded to on the second and third lines of page 4 which would, in certain instances that you would be most familiar with, be more than \$5,000. Is it your position that the bill is limited or flawed because it does not embrace the full statutory right of employees in this province?

Mr Nickerson: I think it is limited, obviously. It is limited by the cap of \$5,000. As far as the individual is concerned, the individual should be entitled to every cent that he is entitled to under the legislation for severance pay, the same as he is entitled to his wages, his vacation pay and all the other benefits that he has earned on each of the entitlements.

Mr Offer: All I am trying to do is get a full appreciation of your position. Is it your position that the bill should be amended to up the cap of \$5,000?

Mr Nickerson: We have said that in our brief. One of our examples in the brief is that the \$5,000 in fact can be met very easily by a person who would be losing his job by not having the termination pay, not having vacation pay, not having a regular payday and the severance pay benefits; no question about that.

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Mr Offer: The next question I want to ask—and I think this is clear in your presentation on page 5—is that we have heard a lot of talk about harmonizing this legislation with the federal legislation. We have more control, obviously, over the provincial legislation. When we talk about harmonizing the federal legislation, I sort of think we are trying to lasso a cloud. We can see it, but we really cannot grab hold of it and we do not know what it is going to look like. It just might dissipate into nothing.

If it proceeds as it now is, you are clearly saying that the \$2,000 that is federal, no matter how you view that dollar figure, should be in addition to the \$5,000 for a worker's claim, as opposed to its being a total \$5,000 cap, with the provincial government claiming \$2,000 from the federal government. I apologize for that question, but it is the only way in which I could put it, because I believe the minister and the deputy said yesterday that in terms of speaking with their federal counterparts, they were looking at getting a recoup of \$2,000 from the federal government in areas where the claim has been justified, which would

lead one to believe that the minister and deputy are looking at a total of \$5,000.

Mr Nickerson: I, like you, will be very leery about whether or not there will be any harmonizing whatsoever between the federal and provincial governments. Second, in saying that, the point in question is if you have a bankruptcy situation, you are dealing with a bankruptcy law. Once you start to get entwined with the whole bankruptcy procedure, we are talking about priorities. Now we are talking about where the workers' priorities are going to be as far as the bankruptcy is concerned and it is going to be limited to \$2,000. That is bankruptcy legislation federally that has to be met federally and should be paid to the employees. Then we should be talking about the \$5,000 on top of that. So we are talking about stacking the \$5,000 on the \$2,000; no question about that. They are entitled to it.

Mr Offer: You do not believe the provincial government should look upon this as an integration of some sort?

Mr Nickerson: No.

Mr Offer: My last question talks about page 7, "The responsibility for ensuring that employment-related compensation be protected should fall directly on all employers rather than taxpayers in general." Do you feel in principle it is unfair that this particular potential liability falls on taxpayers in general, as per your statement?

Mr Nickerson: No. I think the principle, first of all, should lie with the employers and the employers should be responsible for a system where there is going to be a tax on payroll to take care of this situation. If we cannot have that and we cannot put that in place, then it should be the government that stands behind that, and the employee gets his money; no question about it.

Mr Offer: From the taxpayers?

Mr Nickerson: Yes, but I would suggest the way it should be is a payroll tax. In fact, I had one employer call me—it had nothing to do with this—who was talking about the minimum tax the NDP is talking about and said: "Do what you can to make sure there are no provisions coming in, because we like the tax system in Ontario. We don't want to see any changes in the tax system. We like it the way it is. It's a reasonable tax system."

Mrs Witmer: Mr Nickerson, as I listen to yourself and I listen to the other presenters, I am becoming extremely concerned, because I see that in the presentations people are coming from two very differing points of view. We hear on one side people saying that the maximum of \$5,000 is too much. They are concerned about the directors' liability. They are concerned about many other parts of Bill 70. I hear you saying that the \$5,000 is not enough, etc.

How can we in this province make sure we establish a more effective consultation process between the employer and the employee? If we continue down this path, I see more uncertainty created in this province and I see businesses moving away and I see a further loss of jobs. I have to tell you I am feeling very concerned today as I listen to those presentations, because I see two totally opposing points of view.

Mr Nickerson: Let me give you some examples of those opposing points of view, because we led a charge on the whole question of concessions and on the basis of stepping up to the responsibility of whether you are going to have jobs or not have jobs. We have watched the process of employees who in fact have made concessions to employers on the basis that they are going to continue to have employment. In 90% or 95% of those plants and those operations where there were concessions made, the end result was that two to three years later the plant was shut down and the employees lost their jobs anyway.

Mrs Witmer: Ninety per cent?

Mr Nickerson: Yes. We watched it and saw exactly what took place. In other words, the very simple process of somebody coming forward as an employee and giving money to be able to maintain his job does not work because the whole question of the free enterprise system does not allow that to work. It allows only the employers to be able to have work if they have the product they are selling at the time. That is the problem you have with it.

Of course, at the point you are talking about an amount of money, you are always going to have an argument between management and labour of whether it is too little or too much, and that argument is going to take place for a number of years. But I do not see any fears of any jobs that are going to be transferred out of Ontario as a result of this legislation that is coming in. After all, we are saying here, "Give the employees what they are entitled to under the legislation—the severance pay." There are very few executives who do not get the severance pay they are entitled to, very few. They all get their severance pay and they go on to other jobs in the same province, or other jobs in Canada. We have no fear that they are going to move anywhere out of this country as a result of this legislation, similar to what we said when the legislation was brought in about the severance pay.

Mrs Witmer: I will just mention to you that we had one presenter this afternoon who indicated that his company was looking to Buffalo because of what it feared to be the overregulation and the overtaxation. I can certainly tell you that in my own community I have had good, honest, hardworking business people say to me that they are concerned about the air of uncertainty in this province and that they are looking. So I have to tell you, I am concerned—

Mr Nickerson: They may be making the observations that they feel there is going to be some concern with some legislation, because I heard the remarks. It was mostly dealing with labour legislation, which was not a place for that to be presented today. There may be concerns they are putting forward, but I would challenge you to go ahead and find the people who are moving to Buffalo. I see all kinds of ads, I see all kinds of people threatening. I would like to know what the tax system is in Buffalo for that employer because I know that in Ontario it is very lucrative to locate here because of the tax system.

Mrs Witmer: So you do not feel we will lose jobs as a result?

Mr Nickerson: No.

Mrs Witmer: Thank you very much.

The Vice-Chair: I would like thank you, Mr Nickerson for coming before us, and also you, Mr Gottheil.

Mr Nickerson: Thank you for the opportunity.

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BRIAN A. GROSMAN

The Vice-Chair: The next presenter we have on our list—and we are not doing badly, we are only running close to 15 minutes behind—is Grosman, Grosman and Gale. If you would step forward.

Mr Grosman: Maybe I should begin by telling you what my name is. It is Brian Grosman, it is not Grossman. I am no relation to any Grossman living or dead.

The Vice-Chair: I apologize for that.

Mr Grosman: Maybe I can clear the air on that point. I am also senior partner of a law firm called Grosman Grosman and Gale, not Grossman. This law firm has specialized for over 10 years in the area of employment law. I have published a number of books in this area. The most recent book came out last week—a little advertising. *Employment Law in Ontario, A Guide for Employers and Employees* was published last week.

This is an area where I have devoted a great deal of time and thought. I hope I avoid the polarities which Mrs Witmer has just referred to. We represent both employers and employees, which is rather unique. We do not do labour law, but we are representing employees on a daily basis. We are engaged in disputes with employers, be they wrongful dismissals, human rights, occupational health and safety, and all the other pieces of legislation—pay equity, future employment equity, etc.

As a result, we have been very busy over 10 years, because there is no more dynamic area of the law than employment law in Ontario. There is no area of the law, in my opinion, which has undergone as much change in Ontario as the legislation and laws relating to employment in this province.

Under those circumstances, what has happened is that employers, who of course are risk averse and who are looking for stability, are continually engaging people like myself to gaze into a crystal ball and say what the future holds. My answer is I do not know. Similarly, employees, who are under enormous risk in this province of losing their jobs in light of the mergers, takeovers, sellouts, etc., many of which I have been involved in, are very concerned about what their rights are, their minimum rights, their maximum rights. We are advising these people, again, on a daily basis, in this regard.

So I come to you today, as I did last fall before any legislation was prepared, to plead the case for a structured advisory process, not one that is ad hoc, where you invite associations which are union dominated or management dominated to meet from time to time to deal with specific issues, but rather, what I was involved in many years ago. As you will notice from my credentials, I am the founding chairman of the Law Reform Commission of Saskatchewan. I served under the premiership of the Honourable Allan Blakeney.

During that period we had a co-ordinating committee in criminal justice and the job of that committee—because criminal justice was a very dynamic area in those years, 1975 through 1979, when I served as chairman. We had a co-ordinating committee, so the left hand and the right hand would always know what is going on in order to bring some stability, continuity and consistency between the Solicitor General's department, the Attorney General's department, prisons, criminal law, etc. So there was continuity, because the last thing we wanted in the criminal law field was discontinuity, so that people did not know what their rights are.

Similarly, I suggest to you that in the labour-employment field, since it is the most dramatically changing area of the law and it will change, in my opinion, even more in the 1990s—as we now have part-time contractual employment, we are going to see 50% of our workforce female; we are going to see large percentages of minorities, some of whom understand rights, some of whom do not; we are going to see active human rights interventions—we should have in this province a committee of very independent-minded individuals who are not perceived as having a particular political axe to grind, be it union or management, and this committee be available to the ministries that deal with human rights, labour legislation, etc., as a preliminary advisory group that looks at legislation and makes preliminary comments, so that legislation does not go forward until this group makes those preliminary comments with regard to it.

I think that because business is so oriented to stability and because as soon as you put forward legislation and then you have to withdraw it, business becomes extraordinarily nervous about long-term continuity, how it is going to be treated by government, by legislation, etc.

So my first pitch in the paper which I have delivered to you—and I am not going to refer to this paper, by the way. I do not believe in reading papers to committees. I never enjoyed it when I sat on committees. My first pitch is that I think some kind of very strong, independent co-ordinating committee ought to be set up that is in the labour-management employment law field. Because it is such a dynamic field, just as criminal justice was in the 1970s, labour law and employment law will be the dynamic field of the 1990s, in my opinion, extraordinarily dynamic. That is why government that owes a duty both to business and to labour, to employees, to be consistent and, to minimize risk to all sides, should do that by way of good, solid, independent advice. That is point one.

Point two, and I deal with it in my submission to you—I am going to move away from personal liability and go directly to directors' liability. We have in the Employment Standards Act of Ontario a definition of both employer and employee, and for the purpose of directors' liability, or any other liability, by the way—and I make the pitch in the paper that liability should be based on some kind of fault, in my case—there are two problems. For example, how do you define "employee"? Who is an employee for the purposes of the Employment Standards Act? What is an employee?

We have had a recent case in Ontario which says a manager or, if you like, owner/manager of Becker's, is an

employee for the purposes of the Employment Standards Act. It came as a surprise to some of us, but that is a recent case and it is referred to in the recent book. Similarly, what about "employer"? The definition of employer under the Employment Standards Act not only deals with the direct employer of the individual who suffers as a result of the company going under, going into bankruptcy, whatever, but any company which is directly or indirectly involved with this employee. Indirectly goes a long long way, so that if you like to look at hierarchy, it is not only the main company which may have a lot of subsidiaries, but it may be a subsidiary in Mexico of the company in Canada and those directors, according to the definition under this act, might very well be liable to terminated employees under this legislation. So the net is cast very wide.

Going back to my original point, if you are looking to encourage investment in Ontario, the people who are investing, directors, companies, must have some understanding of what their downside is. Are they going to be liable because some company in Sudbury has a problem and goes under? Does that mean there is going to be additional liability on a company that shares a few directors? Not all the same directors, because they talk in the legislation about indirectly, so that they are liable if they are indirectly associated.

One of my recommendations is that the people who are drafting this legislation take a very close look at the definition of "employer" and the definition of "employee" for the purposes of the employee wage protection fund. Do you want a manager/owner of Becker's to be able to tap into this fund? If you do, then the present definition of "employee" is probably adequate. If you do not, then you had better look at that definition again.

With regard to companies, do you want all companies associated with the company in trouble, whether directly or indirectly, to put their directors at risk? If you do, say so. The present act says so. That is a very broad net. I suggest it should be limited to a more direct connection than that one.

Let me say that I agree with the employee wage protection fund. I think it is a good idea, because there are many employees who face enormous problems when a company goes bankrupt and indeed, they do need a bridge. These are the same employees who do not engage senior, experienced expertise to represent them. I think they need that bridge and the bridge would be provided. However, I have heard other submissions which talk about mitigation and whether there should be double recovery or, someone said, a windfall profit, by somebody collecting the provisions under the legislation, then maybe suing and collecting a second time.

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We have had a recent case in Ontario, very recent, which says that you cannot have double collection. You cannot collect, under the Employment Standards Act, your severance and termination pay, and then sue your employer and not have that deducted. The most recent case says that must come off the top. So you cannot have double recovery.

If that is the principle, then I do not think there should be a windfall profit built into this legislation. If somebody is let go and within two weeks is re-employed at the same

wage, then I do not know why that person ought to dip into the taxpayers' pocket for a windfall profit.

The whole area of employment law is based on contract. Contract means that if you suffer damage, it is just to compensate you for what you actually lost over a reasonable period of time. It is not to provide you with exemplary or special damages in order to take care of a rainy day. It is merely to compensate you. On that principle, I think mitigation should apply to all legislation, and that is, if you are gainfully re-employed you should not collect twice.

The problem with that, of course, is that there is no motivation for people to be gainfully employed if it means it is going to cut into their minimum requirement. There are ways around that. We do it every day with regard to employment contracts, and I would be happy to go into those at some future date when we are looking at specific amendments. There are ways to encourage people. For example, in the law generally, as you know, if you mitigate your damages by finding re-employment, you of course do not collect the notice period that you might be entitled to, ie, 18 months, but employers have found a way to encourage these things.

Those are my submissions. I am really here in the hope that you will have a few questions for me, and maybe I can be helpful in that regard. I thank you for listening to me patiently.

Mr Ramsay: Mr Grosman, I really like your idea about setting up some sort of consultative group. I had such a group when I was the Minister of Correctional Services, and it was just a personal—and maybe you are talking about something more expanded—advisory group of people who did not represent any particular advocacy group out there. They were people from the church community, from the criminal justice community, but they did not have titles. You are right: The trouble with labour law and that discussion in this jurisdiction is that everybody has an agenda. So you have, obviously, heads of unions with their agenda, and, of course, their own following that they have to satisfy, and in the other case you have people as head of the chamber of commerce who are out there making threats that everybody is going to go to Buffalo, and so you get this adversarial situation on both sides that is not really constructive.

I think that is a very good idea, that you get basically people from the community that are obviously sensitive to a social, democratic society and contribute ideas but without putting forward these specific agendas that, unfortunately, build distrust from people on the other side. I think that is a good idea, and I would hope that the minister's staff that is here would certainly pass that on to him, because I think this government has a lot to do to build some trust in the general population. That might be one way of doing it so that it does not look like he or the ministry is representing one side or the other, but is basically reaching out to the community to bring people together.

Mr Grosman: When I have worked on these types of committees, if it is not a public quorum and if people are not taking positions for cosmetic or political or other reasons, I am always surprised at how well they can work together.

So I am suggesting a committee of intelligent people. For example, on one of the committees that I served, it was chaired by the deputy minister, and there they had myself chairman of the law reform commission—but I had no particular agenda at all—and they had an academic, a professor of economics on the committee, and they just went out and said: "Who are people whom everybody respects? Let's put a group together that we can get a consensus on." When they were not talking to the public and there were no microphones and there were no recordings, I was always amazed at how much we accomplished. An enormous amount of good will.

Mr Offer: Mr Grosman, thank you for your submission. I have a question dealing with the whole issue of directors. I do not want to misread what was in your presentation. I will re-read it. Do you feel that in any one particular corporation which, for instance, goes bankrupt—we will use that example, a company goes bankrupt and it has a certain number of directors, not all of whom share in the same day to day operation of the company—there should be some mechanism for some of those directors, who are potentially liable under this bill, to argue before a tribunal or something, some mechanism, that on the basis of reasonable care they should be exempt? Right now, under the bill, there is not, and I would like to get your feeling as to whether that should be something available to directors.

Mr Grosman: Generally I believe that fault should be a governing principle, although I do not see that as workable under these circumstances. I think if you are a director, you are a director for all purposes. I agree with a comment I heard earlier that insurance is going to be nearly impossible. That is my reaction as well. So it is going to be very difficult to get this kind of insurance. But I cannot see a reasonable way of excluding some directors and including others on the hands-on principle. Some directors are outside directors. Do you exclude outside directors? Some directors are also officers of the company. Do you nail them and exclude outside directors? No. I do not see that. I think if you take responsibility as a director, you have to take responsibility for all purposes, and under the amended legislation I do not see that as particularly onerous.

Mr Offer: I very much appreciate that response. On the issue of mitigation, I wonder if you can take me through that again. It seems you were saying that an employee who is able to prove a particular claim may have that claim reduced or mitigated in the event that the employee has obtained employment, because the corollary is that many will argue that that person is entitled to those things whether he gets employment or not.

Mr Grosman: No, let me be clear. Under the Employment Standards Act you have that entitlement whether you are re-employed or not. That is called a minimum entitlement.

If you are asking for an employer to pay more than the minimum under the Employment Standards Act, that is, 12 months, 18 months, you have been there 20-some years, etc, then there are two duties that cut in. You have a duty to make reasonable efforts to seek out re-employment. If you do not, a court can say you are not entitled because you

have not been looking. On the other hand, if you look and you find, whatever you earn during the period of reasonable notice, be that six months or 12 months, is deducted from the top.

What companies do, just so you know, in order to get over the hiatus of having somebody who is either not going to look for a job or someone who is penalized by re-employment, is that the majority of packages we put together for companies are based on—let's say an employee is entitled to six months. Under those circumstances, if the employee is re-employed during that x-month notice period, he or she gets 50% of the balance in order to encourage him to seek out re-employment. That is so that they do not sit on their hands over that period. So at that extent, yes, there is a small windfall profit, but then, at the same time, you are encouraging the employee to seek out re-employment and the employer ultimately benefits by not paying out the full term. I suggest that that principle might very well be integrated in some of this legislation.

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Mrs Witmer: I thank you for your presentation, Mr Grosman. I appreciate the fact that you have restored some of my faith, and you have suggested ways in which we can improve labour-management relations. That is certainly, as pointed out before, a concern I have. This committee you talk about, would you see that being appointed by the Ministry of Labour?

Mr Grosman: Yes.

Mrs Witmer: How large a committee are you thinking of?

Mr Grosman: No more than a dozen. To be sure that people can attend the meetings, you need about a dozen to be sure that six or eight are always there. I would say about a dozen.

Mrs Witmer: You would see this committee discussing legislation and changes and, I guess, avoiding some of the unnecessary publicity that has been generated as a result of Bill 70 and also as a result of the two reports on the Labour Relations Act.

Mr Grosman: I am convinced that if those had been submitted to this kind of committee, there would not have been the public problems and the perceived business problems that followed that legislation.

Mrs Witmer: I hope the government does take your suggestion under very serious consideration. I think it is an excellent one, and I think it could have the effect you have intended.

Ms S. Murdock: I just want to go back to your mitigation comments as well. On the minimum standard under the Employment Standards Act for termination and severance—I am specifically talking about those two areas. I do not know whether I am understanding you totally, in that whether your problem with the area is because it is being funded by the taxpayers of the province or whether it is because of—

Mr Grosman: I have no problem with the area whatever.

Ms S. Murdock: —the windfall, the windfall aspect.

Mr Grosman: Oh, the windfall aspect.

Ms S. Murdock: Yes. Which one is it, because I guess our view is that termination and severance are something that is owed to you; you have earned that. Just because you were smart enough to go out and get a job after your company closed or whatever happened, you should not be penalized. You have already earned that time. That was part of the deal and there is a minimum requirement under ESA that guarantees you certain minimum amounts of time. So I am having problems seeing it as something where the worker is beating the system by getting paid twice.

Mr Grosman: The difference between us is that I am looking at the historical background of the law in this area and how it developed. It was always compensatory. What have you actually lost? We will try and reimburse you for your loss. That has been the law for 300 years in this area.

Social engineering and social planning now say, "Well, no, we're not going to compensate you for your loss; we're going to compensate you for the fact that, unfortunately, you've been fired, even though you've lost nothing. You have gone from one job directly into another." In this day and age there is no such thing as being born into a job and dying out of a job. It is a revolving door. You are in for two years and you are out. You are in for four years and you are out. If every time you leave, for whatever economic reasons—and they are usually purely economic reasons; they have nothing to do with your competence or lack of competence—why should you then be entitled to a benefit beyond the compensation which you get, in any case, because you have been bright enough to find a job? Are we going to reward indolence by saying, "You don't need to find a job, because even though you can walk from job A directly into job B we're going to pay you anyhow?"

Ms S. Murdock: Another comment you made earlier was about certainty and stability and the whole point of setting up the employment standards guarantees in terms of time allotments: "If you work for me for 10 years I'm going to guarantee that you're going to get this much time." An employee then stays with that company, builds up all kinds of years of experience and seniority with that company. The company closes, for whatever reason. That employee may have considered, at some point in time, going out and getting something else, and did not because he stayed there and was gaining seniority and gaining rights he believed he had and benefits that were due him. We are looking at it from two opposite ends, because the way I look at it he or she has earned that time and therefore it is owed. It is not some little favour they are granting to them, regardless of whether they go out the next day and get a job with another company.

Mr Grosman: We do not disagree, to this extent: I think there should be some minimal provision that is not subject to mitigation. That was not my pitch. The Employment Standards Act provides that. Where I was responding is that if you have a separate fund, should someone go into that fund—and it may very well be to a maximum of \$7,000, that is, \$5,000 plus \$2,000, if you work it out that way—for \$7,000 of taxpayers' money after he has already received his employment standards minimum benefits and

has moved directly into new employment? Should mitigation not apply?

Ms S. Murdock: But that is not what Bill 70 says, at least I do not read it that way. What you just said would not occur under this bill. In this case, there is a \$5,000 cap.

Mr Grosman: But I am putting the \$2,000 from the feds on top.

Ms S. Murdock: The minister and the deputy yesterday said they would work it as one central application system—if they ever agree with the federal government—where they would get the \$2,000 funded back to them, but the provincial government would pay it out initially.

Mr Grosman: I was not here, so I did not realize that.

Ms S. Murdock: It would be \$5,000. When the employment standards officer took your application and made a determination as to what benefits you were owed, part of that would be your termination and severance out of that \$5,000, but it would not be over and above that.

Mr Grosman: Quite right. We agree.

Ms S. Murdock: Minimum provisions; I got it.

Mr Grosman: I think I have probably overstayed my welcome. Thank you, Mr Chairman, and thank you, members, for your patience.

The Vice-Chair: No, you are just about on time. I thank you very much for your presentation. You came at us from a different perspective and we much appreciated that. 1630

ANTHONY BRATSCHTSCH

The Vice-Chair: The next person to present is Mr Bratschtsch. If you are ready to make your presentation, feel free to start.

Mr Bratschtsch: I appreciate the opportunity to make my presentation. I am a co-owner of a small Ontario manufacturer that exports most of its products to the United States, and in a couple of weeks' time we are going to be celebrating our eighth anniversary.

I strongly agree with ensuring that the workers get paid when their employers go bankrupt or simply disappear. I experienced a nasty situation in 1984 when I was a director of an Ontario company that was associated with an American one through common ownership. At that time, those companies were going through what is today called rationalization. The Ontario company's demise was inevitable. For a long period of time, business decisions were made in favour of the American company at the expense of the Ontario one. We had orders obtained in Canada that were being transferred to the United States. We purchased new equipment and, lo and behold, it would be shipped on trucks to south of the border. Furthermore, the Canadian company was purchasing very expensive items worth hundreds of thousands of dollars and shipping it to the United States, and I was convinced there was no intention to ever pay for it.

I transferred down to the United States and worked for the American company. I applied for and received immigration papers for both my wife and myself, and my first son was born down there. In 13 months, I had acquired 23

orders for the company, but I personally transferred 21 of them up to the Canadian operation. Finally, I gave up and quit my employment. I came back to Canada and sought employment somewhere else.

About a year afterwards, I was contacted by the Canadian company's bank and was informed of some serious problems. I was still a director and I came down to the company to resolve the problems. I found that as a director I was powerless to do certain things, but on my initiative the bank and I made an agreement. If I would put the company into early receivership, the bank would ensure that the workers were paid. I was financially devastated and I never even considered trying to benefit myself. I had previously ensured that certain Ontario suppliers had their interests secured so they were able to get their products back from the United States when the Ontario company went under.

In my mind, there is no question that workers must be assured they will be paid for their work, but I strongly disagree with Bill 70's proposals and implications for these reasons.

Certain portions of the bill would further affect businesses' ability to compete, especially when we are exporting to such areas as the United States. In my opinion the payroll tax would be a regressive tax in that it has to be paid whether the business makes a profit or not. Furthermore, once a tax is in place business expects government to increase it. We have to be sensitive about our ability to compete in the United States. The United States buys more from Ontario than it does from Japan. That marketplace is our most important source of revenue, but we are battered by monetary, taxation and social policies that are destroying our ability to earn those revenues. I could tell you what nightmares the GST is causing manufacturers in Ontario such as myself, stuff you may never have heard of.

Five years ago, we manufacturers held a 17% wage cost advantage over the Americans. By 1990, our position eroded to where we had a 10% disadvantage. How can we expect to generate revenues when the Americans will buy goods from elsewhere because of better pricing? As salaries represent about 60% of most companies' cost of production, a payroll tax will further erode our ability to sell to the Americans.

I heard earlier the gentleman from CAW mention comparisons with Italy, France, Greece, and I am sure that is fine, but I would like to remind you that we are in the shadow of the United States and we must deal with the United States.

Unless I am wrong, Bill 70 would provide for unlimited access to directors' assets without notification without going after the failing company's assets first. That is wrong, in my opinion. This is just as bad as not paying the workers. If such a proposal is in place, most people would probably choose not to be directors, but we need directors in business. This idea smacks of some form of vindictiveness and categorizes directors as immoral and obscenely wealthy business people, which is not true. The average pay for business owners is \$28,400 per year which is only between 3% and 4% more than the average employee's income, and this is for working longer hours

with substantial risks. I got that information from the Canadian Federation of Independent Business, of which I am not a member.

The idea that successful businesses must pay for the failures of others is upsetting. That is what really gets my goat. To me, this is as if you are punishing soldiers because their comrades fall in battle. All you are going to do is weaken those who are left.

According to the recent report issued by the federal Liberal Party's task force on the economy, Ontario has lost almost 140,000 jobs because of various reasons. These jobs must be replaced and they can only be replaced by successful businesses, and I intend to be one of those businesses that employs more people.

My presentation is based on personal experience. As I stated earlier, I am a co-owner of a small manufacturer and export to the United States. I am very sensitive about what prices I have for the Americans. My perspective is that of a small businessman who believes that three out of every four new jobs are created by small businesses. I am here on my own, speaking for myself, not for any business or political group. I feel like I am just one little stick in a bundle. On my own, I am nothing, but you take a bunch of sticks like me and put them into a bundle and that bundle is what keeps this country strong.

Big business will do things I cannot answer for, and so will big unions. But to give people a chance to be employed, we have to generate revenues. That comes from being competitive.

I would like to recommend a possible solution for ensuring that workers do get paid. Maybe it is not a new idea, but it comes from my personal experience. I would recommend that companies be bonded for the average amount of wages they would be owing at any one time should they go under. Right now, because I have to deal across the border, my company must post a bond. I go through the bank on that, and the value of the bond comes out of my company's operating loan. That is not a bad idea, because the banks are always watching our receivables or payables, our asset ratios and so forth; they are always monitoring the situation. If they know something is wrong with my operating line of credit and something is not going well, they will keep us honest. I know this is probably a federal jurisdiction, but it seems to me it is one of the simplest ways to make things work; after all, it does work with my bond. When I made the proposal to the bank manager in 1984 about honouring the wages of the employees, he agreed. I do not see anything wrong with it.

I think Bill 70 is a very important factor, because it sends a signal to the little sticks in society. I have no form of communication with my counterparts in society, but I know if it is sunny outside I will go to the beach and have a good time, and if it is raining I will stay indoors, close the shutters and wait till the sun comes out. I feel Bill 70 is a signal. That signal could say, "Hey, guys, it's going to be raining for a while."

When I hear of somebody moving to Buffalo, I do not put much faith in that. I have been to the States, and in the last year I have examined moving back to the States. As a manufacturer, New York state is a lousy place to go. If

someone says North Carolina or Tennessee, maybe you should watch out. I read a report, and it may be a subjective report, which stated that of the 48 mainland states and the 10 provinces in Canada, Ontario ranked last as a place to go if you want to locate a manufacturing business. I heard earlier that Quebec has a wage protection fund, but Quebec was ranked second-last.

I am here because I feel strongly about my province. I believe we are all products of the same society, and I think we have to be very careful about what signals we give to society.

Ms S. Murdock: In relation to your bond issue, I had the president of Neon Casting, the head office of which is in Toronto, but he operates out of my riding of Sudbury, who was very concerned about Bill 70. We had lengthy discussions on it. His suggestion with regard to funding was that the companies themselves set up in a five-year phase-in plan a funded liability fund, either operated through the government or through some bank or let employers do it themselves. Had you given that any thought, or would it be along the same lines as your bonded issue?

Mr Bratschitsch: I am not aware of what kind of bonding you are—

Ms S. Murdock: I do not know how the bond things work, but would it be along—

Mr Bratschitsch: Make it very simple. Banks are very good at watching finances. They would be the first ones to see that their clients' financial stability was being threatened. A bond would be money set aside for whatever contingency. Let's say I have 15 employees—which I do not—and if my partner's and my liability for whatever obligations, wage protection, whatever, was going to be, say, \$100,000 or \$1 million, that is going to be set aside. The bank is going to say, "Hey, your line of credit is \$10 million, but you can only use \$9 million because we've got \$1 million here that is bonded."

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Ms S. Murdock: Okay, so the concept is not very much different, then.

Mr Bratschitsch: It is very simple, though. Besides, what is a better vehicle than the bank, because a bank is not in business to take risks. They are in business for equity funding, so they are going to watch themselves.

Ms S. Murdock: You are supporting the payment to employees. I am just wondering, then, other than what you have stated, how would you guarantee payment to employees who have worked?

Mr Bratschitsch: When a company is going to go under, usually the bank calls in the loan, and that money is ready, held in reserve. If I have a \$10-million line of credit with a bank, \$1 million—I am using these arbitrary figures—could be set aside as an average figure that would be going—

Ms S. Murdock: But it is not right now. Right now, if you go bankrupt, it does not matter. There is no money set aside for employees, and they certainly are not preferred creditors by any stretch of the imagination. They are not

even included on the list, except somewhere down below. So what guarantee do employees now have?

Mr Bratschitsch: They have no guarantee today. After all, there are no guarantees.

Ms S. Murdock: You stated in your own submission that you support the payment of employees for work done.

Mr Bratschitsch: Yes.

Ms S. Murdock: I am asking you how today, other than this legislation, can you guarantee that?

Mr Bratschitsch: There is no guarantee. I have learned that in my own bitter experience.

Ms S. Murdock: This legislation is it, then.

Mr Bratschitsch: This legislation brings government into businesses' affairs, and I do not think it belongs there. This bill will add to my cost of doing business, and I am just a typical manufacturer who sells to the United States. I have to keep my prices as competitive as possible. Right now, what is being proposed is perhaps a 1% payroll tax, but that could be 3% or 5% years from now. I can see from your reaction I am not addressing the point of your question.

Ms S. Murdock: I am just thinking—

Mr Bratschitsch: If a company goes under today, there is no guarantee its employees get paid. There is no guarantee.

Ms S. Murdock: No. You answered that. How is this cost of business in the sense that right now everything that is in this bill, or amendment, is already legislated?

Mr Bratschitsch: You mean as of today legislated?

Ms S. Murdock: All the guarantees and so on, and it is not at present costing the employer anything.

Mr Bratschitsch: I know there is a limit for directors' liability, but so far, to the best of my knowledge, there is no payroll tax.

Ms S. Murdock: No, there is not.

Mr Bratschitsch: No. And I am concerned too about—in my case, back in 1984, I was history, yet I was still a director. Decisions were being made that I had no influence over. The problem is, someone could come to me and take everything I had and I had nothing to do with it. That is not fair. At that time, I spent a lot of my own money trying to keep the Canadian company going, foolishly. Really, directors, the ones who are the cagey ones, you just have to find your way around it. So you are not going to solve anything.

Mr Ramsay: How are we for time?

The Vice-Chair: We have a couple of minutes.

Mr Ramsay: You are the first person who has come up with another sort of suggestion. I think what many of us are grappling with is how to do this, because I do not know of anybody who does not agree with the principle of this bill, as you do.

Mr Bratschitsch: Yes.

Mr Ramsay: Obviously, workers are entitled to what is due them, and that is what this government is grappling with in this bill.

I am just wondering, with your experience in the export business, in having to secure a bond, what would the difference in cost be to a business to build in a guarantee through the security of a bond, which may ultimately be payroll tax? What does that cost? How do you deal with the bank?

Mr Bratschitsch: It is not much, because if I establish a line of credit with a bank, I do not have to spend it. I establish a \$10-million line of credit, at that time the bank deemed that my company was worth having a \$10-million line of credit. If a wage protection bond was set up for my particular company that had a value of \$1 million, then I could see where psychologically I will have to adjust my line of thinking that my line of credit is now \$9 million not \$10 million. It is the bank's responsibility, it is part of the business relationship, it makes money if I make money that I am still worth while to honour that \$1-million bond if it comes true.

That is the way my bond works now with customs. The bank is financing my bond. Now, my bond is only worth \$5,000 and my line of credit is only \$50,000, because my company is very healthy and we do not like to use the bank's money, but that is what it is. So it is not really a factor. But certainly it is a very simple method that you put in the hands of qualified people who are trained to handle finances. Of course, it is a federal jurisdiction probably.

The Vice-Chair: I will end the questioning there, because we are out of time. I would like to thank you once again for coming and making your presentation. It is quite interesting, this thing about the bonds; a different perspective.

Mr Bratschitsch: Just trying to do my part. Thank you.

1650

ONTARIO FEDERATION OF LABOUR

The Vice-Chair: The Ontario Federation of Labour Mr Wilson, please.

Mr Wilson: Thank you, Mr Waters, and to the members of the committee for allowing us this opportunity to make our presentation on the subject of Bill 70. I would like to introduce my colleague, Mr Chris Shanks, who is the research director of the Ontario Federation of Labour. My name is Gordon Wilson and I am the president.

I believe we have circulated a copy of our presentation in written form through the clerk. If I can, I would like to review that initially with the committee and then we are prepared, obviously, to respond to any questions the committee may have for us.

The Ontario Federation of Labour welcomes the government of Ontario's decision to hold public hearings on the issue of wage protection, specifically the proposed legislation, Bill 70. As our submission documents, the issue of wage protection, in the context of a severe structural recession and the consequent adverse effects on working people, is of vital importance.

This submission reflects the views of the OFL and its 800,000 affiliated members under two main headings: first, the nature of the problem, and here our intention is to document the problems faced by workers in Ontario confronted by economic dislocation and the resulting need for

wage protection, which we believe will be of interest and importance to the members of the committee; and second, the proposed solution. Here the appropriateness and viability of the employee wage protection program will be discussed in our brief, together with several suggestions for further improvement.

First, the nature of the problem: In the OFL's view, there is a very real and pressing need for wage protection in our province. This recession is without question the worst recession to hit Ontario since the Great Depression. Job losses in the province have totalled 214,000 people in the first year of this recession compared to 89,000 in the first year of the 1981-82 recession. The number of jobs in the manufacturing sector dropped by 97,000 in Ontario last year, compared to a drop of 76,000 at the depth of the 1981-82 recession. So Ontario's rate of job loss has been over twice that of the national average, accounting for about 80% of the jobs lost across the entire country.

It is important to note that many of these jobs are gone forever. In 1990, 65% of reported permanent layoffs were due to partial or complete plant closures. In the first five months of this year, 59% were due to partial or complete closures. By contrast, in 1982 only 24% of permanent layoffs were due to shutdowns. The remainder was the result of companies temporarily reducing the number of their employees.

The following table is composed from the figures issued by the Ministry of Labour's office of labour adjustment. The severity and increasing depth of the problem is shown, yet the figures underestimate the problem, as only those closures affecting more than 50 employees are recorded by the ministry.

I just want to quickly refer to table 1, which is the comparison of the figures on closures. If the committee looks at the complete and partial closures and their totals in 1981-82 and the number as compared to 1989 and 1990, you will see there has been a considerable increase in the number of closures in the cyclical recession versus the structural one we are currently engaged in.

Table 2 documents the numbers of workers affected by plant closures in Ontario, and here also the figures show an increasingly severe problem, but again the figures underestimate the problem. Table 2 shows only Ontario closures affecting 50 or more employees. Recorded are permanent and indefinite layoffs from full and partial closures, not temporary layoffs from reduced operations.

Again, to draw the committee's attention to the period 1981-82, if you total full and partial closures in the column in the right at the top, you will see that total is approximately 18,000 workers. If you compare that to the two-year period 1989-90, that figure is a little over 33,000. I believe it is 33,238 workers.

The following page shows the same statistics in graph form. Framed this way, one can easily visualize the structural extent of the current recession in comparison with the more cyclical downturn in 1981-82. For the column on the extreme right of this graph, 1991, I ask the committee members to be cognizant of the fact that 5,958 is only to the period ending in May, so the first five months in 1991.

Like jobs in the resource sector, manufacturing jobs are hard to replace. The average wage for manufacturing jobs in Ontario is \$630 a week, considerably more than the industrial average of \$542 per week and the average in the service sector, where most jobs have been created over the last decade, of \$511 per week.

During the current recession, bankruptcies in Ontario, business and personal, have soared. Business bankruptcies increased by 73% in 1990 compared to the year before. In the same time period, personal bankruptcies increased by 83%. In the first two months of 1991 there were 24% as many bankruptcies in Ontario as in all of 1990.

The employment standards branch of the Ministry of Labour has already received more than 13,000 potential claims for compensation for workers since the Premier announced the government's intention to create a wage protection program. The applicant workers are unable to collect their earned wages and other entitlements due to their employers' insolvency, closure or failure to pay. The Ministry of Labour estimates that in the first 18 months of the employee wage protection program, more than 50,000 workers will in fact qualify for compensation.

Judging by the severity of the recession, a portion of those 50,000 citizens of this province will no doubt be found in virtually every community across the province, particularly those which contain a manufacturing sector. Economic dislocation is not just limited to one city or to any region of the province. It has been estimated that 95 cents of every dollar is spent within a 50-mile radius of a consumer's residence. So an increase in purchasing power to those workers in compensation in those communities should translate into some form, we would hope, of a reduction in bankruptcies. Receiving up to \$5,000 in compensation for lost wages and other benefits will help individuals and their communities survive the economic dislocation in their midst.

All of the data highlighted above indicate that the people of Ontario are experiencing a major industrial restructuring as well as a downturn in the economy. The implications for the future are sobering and considerable, not only in terms of levels of unemployment, but also in terms of actual living standards and in the general quality of life in Ontario. In short, a highlighting of basic economic statistics shows that the recession has hit Ontario particularly hard.

Beyond the cold facts of plant closures, bankruptcy or failure-to-pay statistics, however, is the human element, best revealed in the specifics of actual cases wherein the need for wage protection is apparent.

The case of Best Outerwear, a Toronto clothing plant, is important, not because it is an exception but because it is much more likely to be the rule. In early 1988, Best Outerwear became insolvent. That means it could not meet its bank payments. The Bank of Montreal, citing the authority of its loan contract, appointed a receiver.

A receiver's job, obviously, is to take whatever action is necessary to secure the bank's loan. That could mean reorganizing the company, selling it or closing down and liquidating the remaining assets. Closing down is usually

what happens, and in the case of Best Outerwear, that is exactly what did happen.

When a receiver closes a company down, the cash box has usually been emptied by the former managers. The company's property and machinery are pledged to the mortgage holders or leaseholders. The only assets that can be turned into cash are inventory, work in progress and accounts receivable. So who gets the corporate leftovers?

Under our Employment Standards Act, back wages, termination notice and severance pay have precedence, but only up to \$2,000. The Ontario government's own task force reported that as many as 70% of workers who lose their jobs because of an insolvency closure may also lose out on moneys owed to them. That is what happened as well to the workers at Best Outerwear. The Bank of Montreal exercised its legal and contractual rights to secure as much of its loan money as possible and did so at the direct expense of moneys owed to the immigrant workers who made up Best Outerwear's workforce.

This was a small establishment whose employees were, in the main, immigrant women, including visible minorities and single parents. In contrast to many enterprises, however, it was unionized. The International Ladies Garment Workers Union met with bank officials, made representations to the Minister of Labour, brought in legal counsel and even organized demonstrations in front of the Bank of Montreal in an attempt to highlight the plight of Best Outerwear employees.

The employment standards branch wrote to the Bank of Montreal requesting that it honour the moneys owed to the employees, even though the bank could use its contractual powers to put its interests ahead of those of needy employees. The bank made it abundantly clear that the interests of its shareholders took precedence over the interests of Best Outerwear's laid-off immigrant workers. The former employees of Best Outerwear have yet to receive any compensation. Three and a half years later, without any form of wage insurance, their case languishes before the courts. It is the view of the OFL that such situations, of which we have given but one example, should not be allowed to continue.

Concerning the proposed solution, that of the employee wage protection program, when the Minister of Labour, Bob Mackenzie, introduced legislation creating Ontario's employee wage protection program on April 11, 1991, he said, "We have to take measures to increase protection for workers so that they do not become victims of circumstances they cannot control." Mr Mackenzie also stated that, "Workers are entitled to receive the money they have earned, and they must be assured that this money will be given to them." We agree with these views. The workers of Ontario are entitled to receive all the compensation owed to them. The employee wage protection program initiated by the government of Ontario is meant to provide a mechanism to compensate workers in an expeditious manner for unpaid wages, vacation, termination and severance pay as a result of employer bankruptcy or abandonment or any other failure to pay.

Authored by both business and labour, the Premier's Council report entitled *People and Skills in the New*

Global Economy noted, under the previous government, that there are three main ways in which wages can be protected: first, "a deemed trust or statutory lien on wages, which in effect gives the workers preferred creditor status"; second, "legal action for personal liability against the directors and the officers of a corporation for wages"; and last, "a wage protection plan that would pay employees' claims and attempt to recover these amounts from employers." This is on page 210 of the report. The government of Ontario essentially chose the latter option, although elements of option 2 concerning personal liability existed prior to their announced withdrawal on June 5, 1991.

Bill 70, as we perceive it now, contains two main elements. The first is compensation to employees for lost wages, to a maximum of \$5,000. The program would cover earned wages and vacation pay and would cover the minimum amount of termination and severance pay outlined in the Employment Standards Act. The second is the creation of an expedited appeals process for employers and a new adjudication system for employee appeals. Such legislation promises a dramatic change from the previous practice wherein interests of financial institutions were put before the interests of working people.

With regard to compensation for lost wages, currently a worker who is owed wages, vacation pay, termination or severance pay has recourse to the employment standards branch of the Ministry of Labour. Following an investigation of the worker's entitlement, an employment standards officer has the authority to issue an order to pay against an employer for a maximum of \$4,000 plus severance pay. But despite their best efforts, it often proves impossible to collect the money owing. A worker entitled to wages, vacation pay, termination or severance is an unsecured creditor of an insolvent or bankrupt company.

I would bring to the committee's attention that the claims of workers in the pecking order—the Bankruptcy Act as currently structured puts workers' claims behind those of the funeral expenses of the directors of the corporation if they die in the interim, while the proceedings are under way. That act has not been revised since 1949, under a number of Liberal and Tory governments.

Because workers' claims rank behind those of secured creditors such as financial institutions, the preferred and priority claims allowed in bankruptcy or insolvency are not very effective. Many workers are therefore unable to collect wages, vacation pay, severance or termination pay owed them, as we saw in the earlier example of Best Outerwear. The inadequacy of this situation has also been documented by a number of reports, including the Premier's Council report *People and Skills in the New Global Economy*, mentioned before.

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Recommendation 30 of the Premier's Council report entitled "Protecting Dislocated Workers' Legal Entitlements," states:

"Ontario should provide a wage protection advance to all workers who are owed earned wages, vacation pay, contributions to benefits and pension plans, termination pay and severance pay by employers who shut down and default on their

legal responsibility. Ontario must then vigorously pursue recovery of the funds by all legal means available.

"Changes should also be made to the federal Bankruptcy Act to protect earned workers' wages by giving them priority creditor status."

This is on page 211 of the report, and we have also included it in an appendix to this presentation.

In 1985, the Brown commission report, or Commission of Inquiry into Wage Protection in Insolvency Situations, also recommended changes so employees would have increased rights over money owed. Key data from the Brown commission documenting the extent of the problem, the average loss per affected worker and the commission's estimate of the millions totally lost can be found in appendix attached to this presentation.

Given the severity of economic dislocation, with its consequent human suffering, and taking into consideration the views expressed in the Premier's Council report and the Brown commission—both commissioned by the previous provincial government—the Ontario government has now moved to make workers better able to receive moneys owed them.

In regard to the appeals process, the government of Ontario has moved to ensure that compensation owed to employees is paid in an expeditious manner. Appeals may be initiated by employees, by employers, by officers and directors or by the director of the employment standards branch. An employee can now file a complaint with his or her local employment standards branch office. To ensure the timeliness of payments from the program, hearings on appeals by employers will be required to be scheduled within 45 days of the time an application to appeal has been made. Impartial referees will be required to make their decisions within 90 days of the initial hearing.

Employment standards officers in area offices will investigate all claims for unpaid wages, vacation pay, severance and termination pay, as is current practice, and will certify employees' eligibility for payment under the program. In most cases, no payments from the program will be made before the conclusion of appeal proceedings. However, an adjudicator or referee hearing an appeal will be able to order an interim payment for any portion of the wages which he or she finds not to be in dispute. The payments will also be made to workers while an appeal by employers or officers about their status is proceeding.

The program will be administered through the employment standards branch of the Ministry of Labour and financed out of general tax revenues. By financing the wage protection fund via general revenues, what is really happening is that the government, at least in this first instance, is paying the debts of business with the tax moneys primarily paid by workers and others. If workers defaulted on their debts, the scenario would be very different, and so would the penalties.

The OFL's position is that the program would be better paid out of a payroll tax. Indeed, the government's consultation paper noted that payroll financing is predominant in European Community jurisdictions and is currently utilized in the Quebec and Manitoba construction industries. It is also estimated that the magnitude of such a tax would

be one tenth of 1%. In the current economic climate, this translates into 18 cents per \$1,000 of covered payroll to secure wages and vacation pay. This is not a significant cost. In our view, it would not impact on Ontario's economic recovery, certainly not adversely. Even though payroll financing would be a political challenge in the current economic downturn, it would also be accompanied by program benefits: first, as employers would be forced to police each other to ensure honesty and maintain low costs; and second, as any extension of personal liability would be unnecessary.

There is one further critical point, beyond that of the method of financing, that the Ontario Federation of Labour would like to make before concluding this submission. This concerns the issue of indexing. The issue is a simple one. Without some form of indexing—the consumer price index (CPI) or one of the other indices of average wages—in four years or so the real purchasing power of the \$5,000 cap may well decline significantly. The regulatory ad hoc changes envisioned do potentially allow some relief for working people across Ontario, but the past experience of the trade union movement suggests that without proper indexing, workers will see a considerable shortfall over the coming years.

In conclusion, in this submission we have presented the views of the OFL on, first, the need for wage protection given the severity of the recession in Ontario, as can be seen by the statistics on full and partial plant closures and their accompanying human impacts across the province; and second, why we support the initiative of the Ontario government in amending the Employment Standards Act to establish an employee wage protection program.

When the Minister of Labour introduced the legislation creating the program, he noted that it was both "an important step to strengthen the rights of all employees in Ontario" and "an integral part of the government's comprehensive approach to labour adjustment." The Ontario Federation of Labour concurs, and we sincerely hope the government of Ontario will continue its efforts in this regard. We look forward to the day when the people of this province have a comprehensive system of labour adjustment in place. In our view, the establishment of the employee wage protection program is a major step in this direction.

Mr Offer: Thank you for your presentation. There is a great deal of information contained in it and only a very short period of time to deal with it today. Of course many will be rereading the presentation.

During this day, we have heard a number of people talk about what is being covered, how it is being covered and how it is being financed. We should be looking at that not only in terms of the actualities but in terms of the principles underneath that.

You say on page 17, dealing with the plan being funded by taxpayers, that what is really happening is the debts of business are being paid for with the tax moneys of workers. If one extends that principle, does it not hold true that the bill should include all of the rights of workers under the Employment Standards Act, as opposed to the limitation of \$5,000 now imposed? If one extends this principle to its logical conclusion—

Mr Wilson: All moneys owed workers?

Mr Offer: Yes. If one takes that principle, is it not your position that the rights of workers to all due and owing under the Employment Standards Act should be protected?

Mr Wilson: Let me respond this way. I guess what my mind works from is the logic of common law, common justice, common practice. It is accepted in our society that a debt is a debt that, if it can be paid, should be paid. What we have seen, however, is workers bridled more severely than any other creditor—in the structure, for example, of the Bankruptcy Act that I referred to earlier—and seemingly no attempt by any jurisdiction in this country to relieve that shackling or find a way to open up the logjam so workers can get what they are entitled to.

This government has now moved in that direction. I would be inclined to say that I think every worker in this province should receive all money that is owed. That is not straying from the principle of any other relationship between workers, for example, and the people they are indebted to, for example, finance companies, banks, mortgagees.

I listened very carefully to a previous presentation on this very same point, two presentations ago, I believe. Mr Grosman spoke about how if workers find employment, they should not get full compensation; there should be some carve-out. That is an interesting concept. I wonder if he would prepared to apply that, for example, to a mortgage company where 90% of the mortgage is paid off and the worker at Chrysler is laid off in Windsor and cannot pay his mortgage. Does that mean the bank no longer has the right to seize his property?

I guess what we are trying to get to here is a question of equity, and it says that if the money is owed the worker, the money should be paid to the worker. What I am personally upset about as an individual in this province, as someone who pays taxes as you do, is that it is the people of this province who have to assume the debt created by employers, a debt they should be meeting in the same way that I meet my debts and I assume you meet yours.

Mr Offer: Hence I get back to the first point, and this matter has been brought up earlier. I do not allude to the representation of Mr Grosman because I think, in fairness, that in the end he said he did not actually recognize that the bill was styled in the way in which it was. I do not know that this is a matter of: Is the worker entitled to wages? Is the worker entitled to vacation pay? Is the worker entitled to termination? Is the worker entitled to severance? That is decided. The branch, the board, will make that determination. There is no argument that a particular employee in a particular matter will be potentially entitled to those four categories of dollars.

The question becomes—and I am asking for your position on this—should that employee, after that determination has been made and the dollars are determined to be due and owing, be paid out of the fund all the money due and owing? It is not an issue as to whether the person is or is not owed; it has been decided.

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Mr Wilson: What you are addressing, Mr Offer, is the cap.

Mr Offer: Exactly. The reason I ask the question is might—

Mr Wilson: If you ask me my position and the federation's position, we think the workers should be entitled to all that they are owed.

Mr Offer: Okay, that was in fact my question.

Mr Wilson: Now my question to you is, is that the position you are going to advance in the House?

Mr Offer: My position right now is to ask you the questions, with all due respect.

Mr Wilson: You are not nearly as menacing without the mantle of cabinet around you. You are actually a pretty nice guy.

Mr Offer: That certainly will be in my next householder. And I thank Hansard. I hope they did not miss that.

Mr Wilson: "Nice" is a subjective judgement. It is not a qualitative or objective appraisal.

Mr Offer: Look at that, he is now trying to qualify it.

Mr Wilson: You gave me the opening. I will be off the hook.

Mrs Witmer: I would like to express my appreciation to you, Mr Wilson, for a very thorough presentation. I think you have made your position well known. I really do not have any additional questions.

Mr Wilson: If I could, Mr Offer, you have said it is a very large chunk to try to bite off in a very short period of time. Let me just indicate to you and to other members of the committee, if you want further dialogue on our submission, we would be more than happy to make ourselves available.

Mr Huget: Thank you, Mr Wilson, for a very informative proposal here. As one who has had the experience of a very close friend of mine being out several thousands of dollars in terms of not being able to collect wages owed to him—and in this case it was thousands of dollars—the resulting catastrophe that happened after that person could not collect what was rightfully owed to him, losing his house and in the end losing part of his family and his marriage due to a long-term financial struggle that started with being owed several thousand dollars that no one can collect, and to this day he cannot collect, I have to make the comment that this wage protection program is an extremely important part of legislation for that individual. Had it been in place then, I think there would be some different scenarios in his own circumstances.

To get to some of the presentations we have heard today, I think there is a general understanding that people can accept wages and vacation pay as being something owed to workers and something that should be paid out of the fund. There is not that same understanding when it comes to severance and termination. I wonder if you could give me your views on why severance and termination should be included in that whole package.

Mr Wilson: If you speak to severance and termination, again they qualify under the general terms we have been discussing as moneys owed to workers. Second, when you look at what is happening to workers in the workplace, those workers desperately need that money to assist them whatever form of transition is available to them, and that is scant enough today. There is not an overabundance of job opportunities out there in the province.

Quite frankly, I see no distinction between the two. I have difficulty with the view that somehow paying workers what is owed them is going to discourage investment in this province, because that is to say that no one has an obligation to pay their debts, and I have concern with that principle as well.

Mr Hugst: Following what I consider to be a good business practice, that is, paying your debts, paying workers who are owed vacation pay and wages, severance and termination and all the rest of that, could you see a situation where that would provide an uncompetitive or a bad situation, a negative situation, in terms of business itself in general in this province, simply by paying an obligation that it already owes?

Mr Wilson: No more than I would think a business could view an obligation to meet its tax obligations or for that matter any other obligations it had, or to extend that principle to individuals. I really have difficulty with people who say they are pulling up stakes and moving to Buffalo. My allegiance in this province is certainly to those people who live and work here and to those businesses prepared to make a commitment to remain in this province and to help generate wealth which can be distributed among the people who live in this province. When people say, "If you do this, I'm leaving," I am almost tempted to say, "If that's your decision, go ahead."

I want to tell you what I would do if I were the government of this province. I would make sure they would have no heck of a hard time getting their products back into the Ontario market and I would use whatever device I could find that was within legal grounds or within ethical practices to make sure they were discouraged from peddling their wares to the people they had just deserted when they left this province.

Mr White: Very briefly, Mr Wilson, in my riding, as you well know, there are a large number of plant closures directly related to the free trade bill, auto parts manufacturers, etc., for General Motors and of course Chrysler. I am wondering if you have any thoughts about how this particular program would affect closures of companies that want to move, as you say, to Buffalo.

Mr Wilson: In the case of General Motors, as an example, and I live in the Whitby area as well, it is fairly clear that the corporation's strategic decision is to put a considerable amount of investment, as they have—almost \$1 billion if not more—into the Oshawa facility. That plant is technologically sound and will remain so as a state-of-the-art plant probably for a decade, maybe a little more, maybe a little less. The difficulty, however, is when they make the next investment decision, as that decision will

come up in virtually every auto assembly facility in this province.

It is now completely discretionary on the part of the corporation to determine whether it wishes to make that investment in this market. They now know, because of the trade agreement, that notwithstanding that decision, they will still have access to our market. That is the point that is particularly grating. If you were to say to me, "Is General Motors likely to be upset by this?" I cannot see why. First, they have negotiated substantial provisions with the union involved, the Canadian Auto Workers, in which the CAW has negotiated with General Motors substantial provisions to cover like situations. It would take General Motors in Oshawa determining it was closing down its facilities to really have an effect on this, or certainly a considerable number of the workers who work there. Would General Motors be impacted unduly by this? I cannot really see it.

Mr White: It is really not General Motors I would be concerned about so much—I am certainly aware of their situation—but the number of feeder plants to that corporation, some of which are closing at the moment.

Mr Wilson: Yes. There is no doubt there is clearly a record out there, when you look for the period, say, from about 1988 forward, that a considerable amount of the automotive investment in parts and supplies followed the assembly plants as a result of the auto trade pact negotiated by the federal government in 1965, I believe. You look at the growth of that industry and it happened from 1975 and continued on a growth curve until I would think the recession hit in 1981-82. Then there was a stalling out and a levelling out, but now we have seen a straight line down because the trade agreement has again opened the doors. They no longer have to be here to have access to the market, so they can close their doors and say, "Goodbye, I can make more money in Mexico or South Carolina." So this now comes into play and there will be some costs attached to that.

That is the point I tried to make earlier. I would urge this government and the members of this assembly to make it clear to businesses in this province that when they decide to take advantage of the situation solely and exclusively in their own interests by maximizing their profit or by marginally increasing it and therefore that is the impetus for moving south of the border, or to Mexico or indeed anywhere else, that they do so without any co-expectation that they are likely to be treated kindly when they try and get their product back to the Canadian market.

The Vice-Chair: Thank you very much, Mr Wilson, for your presentation. Some interesting concepts, I must admit, Gord, with me sitting here and you there.

Mr Wilson: It is not difficult to understand. If I was a small business person in any community in this province and I looked at what is likely to be my salvation in terms of my economics and my business, I would have to wind up with the people who are going to live here because that small business person, by and large, is going to live his life in the community he is in, or not too far away from it. His allegiance ought to be with the people who are going to

have remain here, and that includes us, and that is why we are in to make a presentation.

The Vice-Chair: Thank you again for your presentation.

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UNITED STEELWORKERS OF AMERICA, DISTRICT 6

The Vice-Chair: The next presenters are the United Steelworkers of America. I assume Mr Hynd is going to do the presentation. Welcome to the committee, Mr Hynd. Whenever you are ready, the floor is yours.

Mr Hynd: I would like to make a presentation on behalf of the United Steelworkers of America, District 6, which is essentially Ontario. We, the United Steelworkers, appreciate the opportunity to appear before this standing committee to express our strong support for Bill 70. District 6 of the United Steelworkers represents approximately 70,000 working men and women in Ontario. The vast majority of the employees we represent work in the private sector, and many of these are vulnerable to losing wages and benefits when companies that employ them become insolvent. In this presentation we shall show why Bill 70 is so important to these workers, and why the Steelworkers welcome this measure and applaud the priority the government has attached to it.

Bill 70 is needed because in Ontario between 4,000 and 5,000 workers lose out every month on wages and other employee benefits that are rightfully theirs. Each year for some 50,000 to 60,000 workers, their rights are purely notional. What previous legislators did was confer on workers statutory entitlements to wages and employment-related benefits, but took no adequate steps to ensure that those entitlements would be paid.

The majority of workers almost always receive the wages and benefits to which they are entitled, and which this legislature intended them to receive. For workers in the lower tier, however, it is a different story. The majority of workers in the lower tier of the labour market are employed by smaller companies. A longitudinal study by Statistics Canada of private sector firms concluded that, over an eight-year period from 1978 to 1986, 36.1% of the companies employing between 5 and 20 workers exited.

It also should be kept in mind that firms employing more than 100 workers are more likely to have assets or market shares that are attractive to other businesses. For these reasons, these companies more often exit from the market by being taken over, rather than by being wound up. Smaller companies, however, are more likely to exit by being wound up, usually involuntarily.

The Brown report provided estimates of the number of workers who suffered wage and benefit losses as a result of business insolvencies. A more current estimate of the number of workers whose employers will be unable to meet earned wages and benefits is contained in the Ministry of Labour's Wage Protection Fund Discussion Paper, released in December of last year. In 1990-91, therefore, the proportion of job losers whose employers will default on wage and benefit obligations will be around 10% of those who are unemployed.

While the trade union movement has been vigorous in its advocacy of wage protection measures, members of the standing committee should keep in mind that the majority of men and women who will benefit from the guarantees provided by Bill 70 are not likely to be members of trade unions. The men and women whose employers default on wage and benefit entitlements are therefore likely to have below average incomes. From what we know about the situation in the labour market we can also infer that workers who lose wages and benefits are more likely to be women, more likely not to speak English as a first language and more likely, as well, to be drawn from visible minorities. Bill 70, therefore, is very much about protecting the economic rights of those who are not even getting the economic share they were promised, let alone the share they deserve.

The recession makes the enactment of Bill 70 a matter of urgency. Steelworkers welcome the priority the government has attached to this measure. We applaud, as well, the government's decision to make its guarantee retroactive to the day on which it took office.

The average loss on defaulted wages and benefit claims is the equivalent of 3.8 weeks of wages or salary. Wages in the small business sector tend to be lower than average for the province. The actual average loss is therefore likely to exceed 3.8 weeks. In other words, 3.8 weeks is a conservative estimate.

The most significant losses are often those associated with default and severance compensation. The majority, though admittedly not all, of the workers who lose out on severance benefits are older workers. It is older workers, therefore, whose losses are likely to be the greatest when their employer defaults on statutorily promised benefits. From numerous labour market studies, we know it is older workers who have the greatest difficulty in finding re-employment and are most likely to experience substantial wage loss in their next job. Losses of this magnitude would impose hardship at any time. These losses, however, are added to other hardships associated with permanent job loss.

On the following page we have summarized five cases drawn from Steelworkers Files. These cases illustrate the scale of economic hardship that wage and benefit defaults impose on ordinary workers. In one instance, the average loss per worker is \$14,447.32. For us, these workers are not statistics. They are workers who belonged to the Steelworkers, often for many years. The losses these employees suffered are not theoretical issues for us. They are real. We have difficulty in conveying the anger and frustration we feel about having been able to do so little for these workers.

The former government had before it the findings of the Brown commission. They had, as well, the findings of two investigations carried out at the federal level. Of course, former governments also had the unending stream of reports from their own employment standards branch. Moreover, the previous government even had the support of its own blue-ribbon Premier's Council. Why no action was taken is inexplicable to us. Only the members of the former government can explain why they failed to act.

the face of such convincing need and in the face of the impending recession in the Ontario economy.

Under the procedures set out in the current Employment Standards Act, there is often a lengthy delay between filing a valid claim for back wages and the payment of that claim. The widely reported case of Bilt-Rite Upholstery, manufacturer of the Bauhaus label, is illustrative of the delays that stem from the current Employment Standards Act. At the time of its insolvency, Bilt-Rite owed 486 workers approximately \$4 million in back wages and benefits. This represents approximately \$8,200 per worker. Although operations are continuing in the United States, not one cent of the workers' earned wages and benefits has been received for more than 16 months.

Especially with the amendments announced by the minister on June 5, 1991, Bill 70 will establish one of the most expeditious adjudication channels of employment law in any Canadian jurisdiction. Had the situation at Bilt-Rite been governed by Bill 70, up to \$5,000 would have been paid to each employee within 15 days of an order being issued to the trustee in bankruptcy unless that order were appealed.

Bill 70 clearly represents a substantial improvement in adjudicative procedures and in the implementation of a remedy. The time frames that are to be added to Bill 70 represent a useful standard for expedition in other adjudicative procedures regarding settlement of employee claims.

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One of the aspects of Bill 70 that has drawn attention has been its application of directors' liability to defaulted wage and benefit claims. There is nothing novel about directors' liability. A version of that liability has long applied in both the Ontario Business Corporations Act and the Canada Business Corporations Act.

Because of the absence of class action procedures in Canada, claims must be filed individually. The litigation expense and the time to enforce a valid claim are sufficiently deterring to discourage most claims. This occurs even though existing statutory provisions recognize both the validity of workers' claims on directors and the legitimacy of the principle on which these claims are founded. Bill 70 will facilitate enforcement of those claims by subrogating them to the Minister of Labour.

As members of the standing committee are aware, directors' liability applies in Alberta, Manitoba, British Columbia and Saskatchewan. Directors' liability was not invented by Bill 70 nor by Ontario's NDP government. Indeed, enhanced directors' liability was one of the devices recommended in the report of the Premier's Council.

Steelworkers have a particular interest in directors' liability. Our interest arises from the case of Bilt-Rite Upholstery. Bilt-Rite's insolvency was contrived. Bauhaus upholstered products have not disappeared from the market. Martin Silver, the principal figure in Bilt-Rite, has not in any real sense gone out of business. The name Bauhaus continues to play a leading role in the upholstered furniture market. The products, however, are made in factories in the US. The Bilt-Rite bankruptcy was really an elaborate business reorganization, a reorganization carried out largely at the expense of Bilt-Rite's workers.

The \$5,000 ceiling established in section 40i will be sufficient for the preponderance of claims under the employee wage protection plan. However, the \$5,000 ceiling will pose difficulties for some employees. The proposed section 40i allows the government to prescribe a higher ceiling from time to time. We urge the government to indicate its intention to raise this ceiling. In the first place, it is important that the real value of the ceiling not be eroded. This will require linking the ceiling to increases in either the consumer price index or the average weekly wages and earnings.

Finally, the government may wish at some point to revisit the method of funding the employee wage protection plan. Pursuant to the directive of 20 October 1980, most of the member states of the European Community have established guarantee funds financed in whole or in part out of payroll taxes. This method of finance is attractive because it facilitates increases in the benefit ceiling.

Steelworkers support Bill 70. We welcome the employee wage protection plan it establishes. We applaud the government for taking these steps and for the priority it has given to this legislation.

Mr Arnott: Thank you, Mr Hynd, for coming here this afternoon with your opinion on Bill 70. I have one question with respect to the first page, "Bill 70 is needed because in Ontario upwards of 4,000 to 5,000 workers lose out every month on wages and other employment benefits that are rightfully theirs." That number, I would assume, is quite current.

Mr Hynd: We think it is correct.

Mr Arnott: No, current. It has gone up, I would presume, in the past number of months given the recession.

Mr Hynd: I would assume the figures we have can only substantiate that amount.

Mr Arnott: It is an estimate. Are these 5,000 people who will never receive any remuneration for what is owed to them without the benefit of—

Mr Hynd: They may receive some, but they may not be paid all their benefits. As the legislation is retroactive, it will cover the people who are currently being affected and those affected up to the time the NDP—

Mr Arnott: Can you tell me how you generated the estimate?

Mr O'Grady: I am John O'Grady with the Steelworkers. The estimate is generated by the Ministry of Labour. That is the estimate of the Ministry of Labour expressed on a monthly basis in the event of a severe recession, which I think most would concede is what we are currently experiencing. What gives one further confidence in the Ministry of Labour's estimates is that they are largely consistent with estimates made about 10 years earlier by the Brown commission that was set up by the Conservative government. When you have two separate sources coming up with essentially the same orders of magnitude, I think you can have a measure of confidence in that estimate.

Mr Gerard: Our experience has been that during this recession a large part of our membership who have been

thrown out of work as a result of either real bankruptcies or contrived bankruptcies have ended up getting nothing. Part of the reason they get nothing is that they are so far down the list of who collects first. Banks never give a break. They take their chunk first, and after they have had their chunk very seldom is there anything left for anyone else, let alone to collect things like severance pay and vacations. We sometimes get portions of wages, depending on how expeditious the owner has been in slamming the door shut.

Ms S. Murdock: Mr Hynd was commenting that it was going to be predominantly women, immigrant women whose first language is not English, and non-unionized employees who are affected by Bill 70. Other people have commented too, and I think there is a mistaken belief that it is the workers who belong to big unions who are going to benefit. Not only is it going to be the people you mentioned and unionized workers as well, but any worker in this province is going to be affected by Bill 70. That is something your report brought out that no one else has put forward, and I thank you very much. It was excellent.

Mr Hynd: Quite frankly, no worker will benefit from this legislation. Workers would much rather continue to be workers than thrown on the garbage heap, either by the recession or by what is happening in bankruptcies, business insolvencies and contrived insolvencies. We believe that nobody is benefitting from this. What workers may achieve is what they are entitled to, and what they are entitled to is very small. It is the wages they earn, it is the laws that are in effect, and their entitlement to receive what the law provides. Surely that is not a benefit. Surely that is only a minimum.

Ms S. Murdock: I stand corrected.

Mr Offer: Thank you for your presentation. I have one line of questioning, and that has to do with the ceiling of \$5,000 not being eroded. This is a recent point brought forward by you in the second place, but first by the Ontario Federation of Labour which made a presentation just before you. I think you were here, so you would have heard their position that the dollar ceiling should be indexed. Is the point you are making on page 15 of your presentation, when you are urging government that the real value of the ceiling not be eroded, are you in essence saying that the ceiling should be indexed?

Mr Hynd: If there is any way to continue real value; one method is indexing according to the consumer price index.

Mr Offer: In the legislation there are regulatory-making powers given to the government, the first to prescribe other payments that are wages, which I will leave for a moment, and another to provide for increases in the amount of compensation which the employee wage protection program can pay. Ostensibly, this type of increase might be able to fall under that regulatory-making power. My question to you is, would you find it objectionable if that type of regulatory-making power were taken out and put into legislation? In other words, when it is a regulatory-making power, it does not have to go through the Legislature. There is no real means for input and consultation. Would you be opposed to taking this part out of the regulatory

power and put into the legislative section so that it still could be dealt with, but only after it went through legislative processes now?

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Mr Hynd: Certainly. It would be, in my view, just another way of delaying due process. If in fact \$5,000 the limit that is payable today, then surely it does not make a lot of sense to allow the \$5,000 to be eroded by an increase in the cost of living. The legislative process, as we have seen, in many instances can tie things up for a long time. We are in favour of the process, and the thing that really annoys me is that we are talking about this at the time and date. I am not surprised this is the first time we have had a piece of legislation that guarantees to workers wages earned. I find that very difficult to struggle with. I find it difficult that we have passed laws in the Employment Standards Act that entitle employees to benefits and there is no way they can get the benefits. That we allow them to get the benefits on paper does not do workers any good. That I find objectionable. I am glad that, at least today, we are struggling with that objection and, hopefully we can some day get it that workers will receive the entitlement both under the law and for wages they earned.

Mr Gerard: By way of a further explanation on your question of removing it and subjecting it to the Legislature. Harry says it would just be added delay and I suspect would be a hell of a lot more than that. We have waited years to have some government with the courage to bring this in and would hate to have years before some government has the courage to give the increase that is needed. I guess government members' pensions are subjected to the regulatory process and the indexing of their pensions is done by regulation. I do not see where there is any difference between what government members' pensions get by way of index, and what workers' legal entitlements to the earnings, vacations and severance should be. There is no reason to do that.

Mr Hynd: If you tied it to that kind of index, then I am sure directors would be happy with that.

Mr Offer: Just as a result of that last comment, taking that final response, would that hold true of one other regulatory power, which is prescribing other payments that are wages for the purposes of this plan? It just gives a scope and a breadth to government not only to increase the amount in the plan, but also to extend its breadth to take about some other types of payments. Would your position be the same in terms of that area?

Mr Gerard: Yes.

Mr Offer: Interesting.

Mr Gerard: We just feel we should be dealt with less judiciously than members of Parliament.

The Vice-Chair: I thank you for your presentation and your time.

Mr Gerard: I apologize for being late. It was the people's airline. When it was actually owned by the people, ran on time.

GOGI BHANDAL

The Vice-Chair: At this point, I would like to call Ms Bhandal. Thank you for coming before the committee in advance and the floor is yours and you are free to carry on your leisure.

Ms Bhandal: My name is Gogi Bhandal. I was the 1st president of Local 32U of the United Steelworkers of America, which represented employees of Bilt-Rite, of Bauhaus. I appreciate the opportunity to appear before this committee to express my strong support of Bill 70. I know my members would not benefit from this bill, but at least my brothers and sisters will.

In this presentation, I wish to tell you how difficult it was for the workers of Bilt-Rite when Bilt-Rite declared bankruptcy and the workers lost their jobs with decent wages. The financial strain and emotional stress from these circumstances was far too great a burden to expect one to endure.

Workers were not informed. They worked a full shift, which ended at 4 o'clock on March 16, 1990. They went home and received phone calls from the supervisor that the company filed for bankruptcy.

I am sure you must have read about Bilt-Rite in newspapers. Bilt-Rite was one of the largest manufacturers of upholstered living room furniture in North America. The company had been in business over 50 years. When I started with the company—I started the job in 1977—it employed approximately 50 or 60 people.

The employed numbers grew over the years to the peak of 700 unionized employees, not counting the office staff. Twenty per cent of the unionized workforce was pieceworkers whose average earnings were \$10 to \$20 per hour. The majority of workers were new immigrants whose first language was not English. They could not speak English.

In 1988, numbers started to decline after the inception of free trade and the opening of a new manufacturing facility in Mississippi in the United States, although we were assured by the company, through a letter to the union, that the new facility would not have any effect on our jobs. Unfortunately, that was not true. We started to get less work and we were sent home early without pay. In 1988, we received UIC assistance.

From mid-September 1989, we were forced to endure shortened workweeks, which resulted in reduced earnings. On average, the shortened workweeks amounted to 25 hours of work per week. The company continuously assured the employees, and our union, that the short workweeks were temporary, thereby encouraging the employees not to seek employment elsewhere.

The union on numerous occasions requested that the parties jointly apply for assistance through the UIC work-share program. Even though the parties had previously requested and received such UIC assistance, the company adopted the callous position that if the union paid the company payroll department to do the paperwork on a weekly basis, it would be prepared to consider the UIC work-share program. As a result of the company's imposed short workweek over the period of six months prior to being laid off on March 16, 1990, the employees were faced with a greatly reduced unemployment insurance benefits entitlement.

I can give you a simple example. For one of the workers whose regular pay used to be \$8.52 per hour, amounting to weekly pay for 40 hours of \$340.80, not including overtime, the normal entitlement at 60% would have come to her as \$204.48 in UIC benefits. Instead, because of the severe reduction in normal working hours, her unemployment insurance cheque was only \$88. We wrote several letters to the minister, who happened to be Barbara McDougall, but our appeal was denied.

1750

In our opinion, Bilt-Rite's bankruptcy was well planned. The company did not give us any information. They treated us as less than human and stopped paying our pension premiums and extended health care premiums from the summer of 1989. Union dues were deducted from our paycheque, but they were not paid to the treasurer of the union. Workers did not receive the last week's wages after the bankruptcy; no severance pay, no notice pay, no terminations pay. Nothing was received. The union filed claims with the employment standards branch. An investigation was conducted and the outcome was that workers are to be paid. The company hid all the money in Bauhaus and numbered companies, and continues to operate from its US plant up to today. Workers have not received a cent. They had to pay medical and dental bills from their own pocket.

I can never forget my workers walking into our office with \$2,400 in medical and dental bills. Because the company did not pay our premiums, the insurance company did not pay the bills. Workers were getting phone calls from their dentists, "If you don't pay, we will give it to a collection committee." They were forced to pay, and they did not have any money, because the company did not pay the last week's wages, and they had to wait for unemployment insurance for six to eight weeks.

As a result, our workers have lost their houses and cars, and families broke up. By my calculation, an average worker is owed \$8,200. I will conclude by saying that our union has done a fantastic job for our members. The union approached the federal and provincial governments. An adjustment committee was formed. I was on the committee. Through that committee office, we helped our laid-off workers. The company was invited, but elected not to participate. They were very unco-operative and did not give us the list of all non-union members they had in other Bilt-Rite companies. They did not give us the list, so we could not help those members. Through our office, we could help only unionized members.

It was very difficult to find jobs for our people, because the majority were unskilled. The majority did not speak the language. Because the furniture industry is almost dead, we could not find jobs in the same industry. It was a tough job, and the committee was in operation for almost 15 months. Our union paid the expenses for the office. Government helped us. Through that committee we were able to find employment for about 75% of the workers.

I strongly support this bill. I think this bill should be passed and workers should be paid.

Mr Huget: Thank you for a very personal and moving presentation. I have three or four very short questions, and perhaps one longer one. Are the owners of the company still operating a company in Ontario now?

Ms Bhandal: No, they are operating in the US.

Mr Huget: To the best of your knowledge, what did they lose out of this whole exercise?

Ms Bhandal: I do not think they lost anything.

Mr Gerard: Not a damn thing. In fact, I will tell you that they sold themselves, because they had everything held in different numbered companies. The Jaguar the plant owner owned was held in a numbered company. He sold it back to himself before he left at a rate that was obscene. Having seats on the board of trustees, we objected to him selling himself his Jaguar at a highway robbery rate, yet he did it.

Mr Huget: Was there in your view money somewhere that could have paid those obligations to the workers?

Mr Gerard: Gogi did not expand on this: Through the pressure of our local union and the pressure of the district and various regional offices of the union, we managed to—I will not use the word “force”—condition the Ministry of Labour employment standards branch to proceed with charges. The hearings on those charges were resolved a few weeks ago and the numbered companies were found to be liable. As to the owner, Marty Silver, the court held we could not hold personally liable. We are now 18 months since the closure and subject to appeal, which may take another 18 months to two years. Our members have received not one damned thing.

Mr Huget: That was going to be my next question, have you received anything at all after the bankruptcy? It does not look, at least in the immediate future, like you are going to receive anything even now.

The last question I would like to ask, and it may a little difficult for you to expand on it, is could you tell me from your personal experience some of the things that have happened to the workers in that plant after the bankruptcy?

Ms Bhandal: After the bankruptcy?

Mr Huget: Yes.

Ms Bhandal: It was hard for them to find employment and more or less they were forced to pay bills. They did not have any money because they did not receive any wages for the last week. Then for UIC benefits they did not receive full entitlement because of the forced short workweek prior to the bankruptcy. Every time we had meetings with the management, they said, “It’s temporary, it’s temporary,” and they did not agree to apply for the UIC work-share program. They did not co-operate.

Mr Huget: So many of those workers have lost a great deal.

Ms Bhandal: They have lost their homes, lost their families, lost their cars.

Mr Huget: There was a comment made in a presentation today that people agree with workers being entitled to wages that are owed them and that this is something society needs to look after, but there was a reference to some

greater need of society, that perhaps if we had the luxury of allowing workers to recover their wages, that would be fine, but we may not have in today’s society and perhaps there is a bigger need to look after other aspects of bankruptcy. What do you think people in this province should do?

Ms Bhandal: They should look after basic needs. There should be moneys available for basic needs. Members, if they have \$5,000 or \$3,000, do not have to go through hard times. They would not have to lose their houses and they would not have to lose their families.

Mr Gerard: I do not know of any other piece of legislation in Ontario except legislation that applies to workers, whether it is the Employment Standards Act or the Labour Relations Act, that implies you have some right and the law gives no vehicle for enforcing that right, or gives such an inferior vehicle to enforce the right that you have raised up some sort of expectation that will never be met.

For the workers at Bauhaus, at Bilt-Rite whom Gogi refers to, the first language for the majority of them was not English. The majority of them had shorter terms of seniority because of the major expansion that had happened in the last 15 years. The majority of those workers to this day do not understand how they could immigrate to a society that allows something to go on like what went on at Bilt-Rite when the owner—I say it whether we are in private government hearings or not, because I would love to be sued; it would be a great place to have a fight—corrupts a bankruptcy and works with the union, which Gogi did not say. We worked with the owner and the government and even attempted to get relief from workers’ compensation and to work with the owner to try to get work-sharing and to do all of these kinds of things, while he was going through nothing more than a charade and setting up shop somewhere else and in fact disappeared in the dark of night, set up a whole bunch of holding companies under numbered companies and went and did what he did.

Do you want to ask me what kind of law we have? That guy ought to be tracked down, charged as a criminal and put in jail. That is the kind of law we should have. Directors’ liability, in my view, does not go far enough. This guy ought to be in jail and the government should be taking steps to put him there for what he has done to these workers. If he did that in any other kind of decent society he would be in jail.

1800

Ms Bhandal: There were three other plants that went bankrupt with our plant, and they were non-unionized. That company did not give us a list of those members so we could help them from our office. We have some members from our plant who are in school. They are learning English. They have taken other training courses. It is too bad we could not help those brothers and sisters because the company did not co-operate. The Minister of Labour tried to get a list from them. They said no. They did not give it to us.

Mr Offer: Thank you for sharing the experience with us. I think it is important that we hear these experiences so that there is nobody who has not had experiences in his or her own riding, certainly in the last while, with the ravages of the recession.

My question is going to be something else on Leo's point. I want to talk about the last point you made on this issue. You said you should be able to go after the directors, and you went, to a certain degree.

Mr Gerard: I will go as far as you want me to.

Mr Offer: This bill, when originally introduced, imposed a liability on directors and officers. I will take the officers out of the picture, but it did impose a liability on directors of a personal nature, not only for wages and vacation pay, but also for termination pay and severance pay. That liability, we are anticipating from statements by the minister, will be reduced to a liability for directors potentially of only wages and vacation pay and not severance and termination. Can you share with me your thoughts on these amendments.

Mr Gerard: My immediate thought is that I should surface my remarks by saying I chaired the adjustment committee of the Premier's Council that came up with the amendments, the Premier's Council report that suggested expanded directors' liability. So I can share with you what was in our mind, or in particular my mind, at that point in time.

What was in my mind was that there would be a fund that would be established by the government whereby workers would be able to receive their legal entitlements. Legal entitlements, I mean all of your legal statutory entitlements that are defined as wages, termination pay, severance pay, that whole bundle of wax. It would then be turned to the government, through its regulatory process, to go and recoup whatever it could.

Certainly what was in our mind were the numerous Bilt-Rite, Bauhaus kinds of situations. This is a unique situation because you are hearing it from one of the people, it is not a unique situation because it goes on regularly in small, non-unionized shops with a majority of women, a majority of new Canadians. We have all kinds of contrived bankruptcies and corporate reorganizations in the name of bankruptcy. You know it goes on; I know it goes on.

Our view was that the government then would have all the legal mechanisms at its disposal to go and recoup that money, including a legislative vehicle for making directors liable, including an expanded directors' liability that if you are found to have participated in a contrived bankruptcy or an attempt to defraud your workers of their legal entitlement, that became a criminal act and the government would then use the full force of the Criminal Code to go after those kinds of people.

I can tell you in all honesty that it was certainly not my role as the chair of the committee of the Premier's Council to think of some director who was trying to sell widgets and nobody was buying widgets and he worked like crazy to try and make that company survive and the company did not survive. It certainly was not my view that director would lose his or her home and go to jail. It was the right of the government to pursue that and make that decision on its own. Whether it wanted to pursue it to the full extent of the law or to a lesser extent of the law would be at government discretion. If they had the kind of circumstances we are talking about with Bilt-Rite, with Bauhaus,

I know what my recommendation would be, whether I was in the government or whether I was in the union chasing the government to do something. This kind of circumstance should have been enforced to the fullest extent of the law, using what I believe and others believe should be directors' liability. What went on would have been a criminal act.

Mr Offer: But the point I was asking is, we basically have before almost us two bills, the bill as it was originally introduced, which had a much wider scope and latitude, dealing with directors' liability, and the second bill, the bill as amended, which cuts it down, cuts officers out and cuts directors out. On the basis of the example and the experience of Gogi Bhandal, are you in favour of those amendments which were presented?

Mr Gerard: We came here as a union earlier to tell this committee that we are supportive of Bill 70 as it is currently proposed. I would have much rather had more support from the Liberals and Conservatives on the full scope of the amendments as they were originally proposed. If the Liberals and Conservatives on this committee would like to write a minority report suggesting that the full pressure of the directors' liability be reintroduced into legislation, I would support you on that.

Mr Offer: So you are in favour of the first bill.

Mr Gerard: You have heard what I have said.

Mr Offer: You are not telling me again.

Mr Gerard: If you put it into your minority report that you think it should go back in, I will support you on it.

Mr Arnott: Thank you, Ms Bhandal, for coming in today to share your very personal testimony with us.

Ms Bhandal: Thank you very much.

Mr Arnott: It is a perspective I have not heard before, frankly, and I appreciate the fact you have come in.

Ms Bhandal: We went to Mr Rae and we went to several MMPs in the circumstance when Bilt-Rite went bankrupt.

Mr Arnott: To Mr Gerard, I am just somewhat intrigued by your idea of reintroducing a form of debtors' prisons, in a sense, when you talk about throwing people in jail for not paying their employees.

Mr Gerard: We are not talking about that. I will tell you again. You can listen to me again. You have a circumstance where the government, in enforcing its right to make a claim and to recoup its payment, finds there was a contrivance of a bankruptcy in order to attempt to defraud workers of their legal entitlement. If I try to defraud you of your legal entitlement, have I not acted like a criminal? If an owner of a corporation acts in such a way as to attempt to defraud his workers of their legal entitlement, is he or she not a criminal?

Mr Arnott: Do you intend to continue to pursue that particular perspective?

Mr Gerard: No, we have apparently lost that debate and we are prepared to support the legislation that is currently before us.

Mr Arnott: But in the future are you going to continue to pursue—

Mr Gerard: We will attempt to work with the legislation when it is passed and see how effective that is first.

The Vice-Chair: Everyone has had an opportunity, so I would thank you again for coming before us and giving us this personal experience. I think it is the first one we

have actually had, someone who has been through it. I know it was a very emotional time.

The committee now stands adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1808.

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Resources development

Employment Standards
Amendment Act (Employee
Wage Protection Program), 1991

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de l'Ontario

Première session, 35^e législature

Journal des débats (Hansard)

Le mercredi 31 juillet 1991

Comité permanent du
développement des ressources

Loi de 1991 modifiant la Loi
sur les normes d'emploi
(Programme de protection
des salaires des employés)

Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 31 July 1991

The committee met at 1009 in committee room 2.

EMPLOYMENT STANDARDS AMENDMENT ACT (EMPLOYEE WAGE PROTECTION PROGRAM), 1991

LOI DE 1991 MODIFIANT LA LOI SUR LES NORMES D'EMPLOI (PROGRAMME DE PROTECTION DES SALAIRES DES EMPLOYÉS)

Resuming consideration of Bill 70, An Act to amend the Employment Standards Act to provide for an Employee Wage Protection Program and to make certain other amendments.

Reprise de l'étude du projet de loi 70, Loi portant modification de la Loi sur les normes d'emploi par création d'un Programme de protection des salaires des employés par adoption de certaines autres modifications.

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION

The Vice-Chair: Can we call the committee to order? Our first presenter this morning is the United Food and Commercial Workers International Union. The floor is yours, at your leisure.

Mr Connolly: My name is Kip Connolly and I am the industrial sector director for the United Food and Commercial Workers International Union in Canada.

Some of you will be pleased to know that, while we had originally asked for 45 minutes, we have cut our presentation down. I think it is six pages plus appendix A, so it is seven pages in total. So I for one am thankful that we're a little bit late getting started. I have copies of our submission for each of you, if you want to follow along.

The United Food and Commercial Workers International Union, UFCW Canada, is pleased to have an opportunity to appear before the standing committee on resources development to present our members' views on Bill 70, the proposed amendments to the Employment Standards Act to create an employee wage protection program.

UFCW Canada is Canada's largest private sector union, representing some 180,000 members in this country. UFCW members are employed in more than 20 sectors of the economy, including the retail, service, meat packing, food processing, brewing and beverage production and distribution, fishing, general merchandising, health care, shoe and leather manufacturing and banking industries. UFCW represents more than 70,000 women and men in Ontario.

Over the past several years, the people of Ontario have gone through a period of unprecedented change. This change has been made more severe by the economic recession which has hit Canada, and has been particularly damaging in Ontario. During this time we have seen the loss of hundreds of thousands of jobs. Bankruptcies have reached record levels.

Our union is very concerned about the dramatic increase in the number of job losses in Ontario. More than 5,000 UFCW members employed in various sectors have been affected by layoffs or closures in the past two years. In these unsettled times, workers are concerned about their jobs and about the security of the wages and benefits they are earning through their employment. An example of a case in which UFCW Canada members in Ontario were affected by a bankruptcy situation will be discussed later in this presentation, and you can note that example in appendix A.

UFCW Canada is convinced that in the future more UFCW members in Ontario will lose their jobs and will face difficult situations due to bankruptcies or receiverships. UFCW is strongly interested in and supports the development of an effective employee wage protection program that will ensure that our members and other workers are provided increased security.

When employers fail to fulfil their responsibilities to workers, whether because of bankruptcy, receivership or abandonment of a business, it has been the individual worker, his or her family and members of the community who have had to bear the financial burden of unpaid wages and benefits. The proposed EWPP seeks to remove some of this burden by strengthening the security of workers' earned wages and other compensation. We believe the proposed employee wage protection program is an important step forward and will provide an appropriate mechanism for a much-needed statutory protection for workers. We appreciate this government's efforts in creating such a fund as part of a comprehensive and integrated effort to provide for more effective programs that will assist workers, communities and employers affected by the recession and by the substantial changes and industrial restructuring that are occurring in the economy.

The need for a wage protection program: There is a significant need for enhanced wage protection in this province. The reasons for an employee wage protection program are many:

The current recession is the worst recession to hit Canada and Ontario since the Great Depression.

More than 200,000 jobs have been lost in Ontario during this recession.

Ontario's rate of job loss has been twice the national average, accounting for 80% of the national loss in jobs.

The majority of the jobs lost in this recession have been permanent ones. In 1990, 65% of reported layoffs were due to partial or complete plant closures.

Business bankruptcies increased by 73% in 1990 compared to the year before. In the first two months of 1991, there were 24% as many bankruptcies in Ontario as in all of 1990.

The existing Employment Standards Act has failed to ensure that all workers receive full wages and benefits earned and owed in cases of bankruptcy and insolvency.

The federal government has failed to amend the Bankruptcy Act to protect workers from loss in cases of bankruptcy or receivership. In fact, it has been 25 years since the Bankruptcy Act has been amended, in spite of a widespread recognition of the urgent need for changes, particularly in terms of protection or priority for workers. The changes to the Bankruptcy Act proposed by the federal government under Bill C-22 will be inadequate. This fact reinforces the need for an effective provincial program.

There are currently 13,000 potential claims in Ontario for compensation from workers who are unable to collect their earned wages and other entitlements due to their employer's insolvency, closure or failure to pay.

New approach to dealing with change: During recent years, the pace of change in the economy of Canada in general, and in Ontario in particular, has increased significantly. This change has brought with it great technological advancement and many new benefits. It has also brought new problems and challenges. Economic downturns have become more frequent, bringing with them high unemployment, inflation and crushing interest rates. Companies come and go with startling regularity, disrupting the lives of thousands of working people, their families and their communities in the process.

While some of those changes are positive, many also have the potential to seriously and negatively affect workers in this province. Working people are the ones who suffer most when a company does not do well and must scale back its operations. Working people are the ones who pay the price for corporate restructuring, sales, mergers and takeovers, and companies going out of business.

UFCW Canada is not opposed to change and fully recognizes that for there to be economic and social progress, change must occur. At the same time, we recognize that if the economy and the labour market are to change, we must find more effective and more equitable ways of dealing with that change. We must find ways of dealing with job loss to reduce the burden which it places on workers and their families and on the communities in which they live. We must find ways of assisting workers in their transition to new jobs and ensure that they have the skills required to find new employment. We must also ensure that workers are able to move to new jobs that pay good wages and offer good working conditions. Under such conditions, workers will be able to respond to changes which occur in the economy and the labour market more positively, and the hurt and disruption created by layoffs, closures, bankruptcies or receiverships will be reduced.

In Ontario, we must find new ways of dealing with the bankruptcies and receiverships. We must prevent situations from occurring in which workers lose their jobs and also lose the wages and benefits they have already earned. The present situation represents the worst form of double jeopardy, and new strategies must be put in place.

UFCW Canada applauds the efforts of the provincial government in seeking to develop fair and effective programs to facilitate the adjustment process in this province.

The government is, in our view, showing great vision and strong leadership in moving Ontario towards a system in which changes occurring in the economy and the labour market are dealt with progressively, not brutally and without any thought as to where those who are affected must end up tomorrow. Such a system will enable Ontario to move ahead more effectively and take better advantage of our strengths in competing in world markets.

We are quite frankly at a loss to understand the hysterical reaction which has come from some quarters of the business community. Some would have us believe that a wage protection program is a radical idea which will destroy the economy and cause businesses to flee the province. Such arguments are preposterous. The proposed wage protection plan has been discussed by business and labour for years, specifically in the context of the long-overdue and much promised amendments to the federal Bankruptcy Act. In fact, a form of wage protection fund has been proposed by the federal government, although it appears to be somewhat less viable than Ontario's.

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UFCW Canada believes it is a given that workers who have earned their wages and benefits should be able to recover them when their employers go bankrupt. Workers should be left holding the bag and suffer from both job loss and lost wages and benefits?

Workers must be protected from wage and benefit loss and they should receive this protection through a separate program. Workers should not be grouped in with the company's creditors because they are not creditors per se. Unlike lenders or suppliers who are in the business of making profits from money lent and risks taken, workers receive no return on money earned but not paid. Workers certainly do not agree to risk their earnings and should therefore not find themselves at the bottom of an impossible long list of creditors.

UFCW believes the employee wage protection program is a logical and progressive step forward. We commend the government for proposing such a program and firmly believe the program will prove beneficial to all affected parties including the business community and workers.

To the nay sayers we say that the proposed employee wage protection program will be of benefit to Ontario. It is not the wage protection program that business should be worried about, but rather the irresponsible companies which close plants with little or no notice and leave workers without the moneys they have earned and the kinds of adjustment assistance they require. The wage protection program will take away some of the burden that has unfairly fallen upon workers and serve to make the adjustment process that much easier for all concerned.

In the remainder of our presentation, UFCW Canada will address four issues in relation to the proposed fund: coverage, cap, financing the fund, and recovery of funds owned; also the example we have included in appendix A.

Coverage: The UFCW believes that any and all money a worker has earned, including wages, benefits, vacation pay, termination and severance pay or other payments belonging to that worker and must be paid to the worker. Bankruptcy or receivership should not change this fact.

In terms of protection, the coverage offered by a wage protection program should not be seen as a benefit for workers. Recovering money that has already been earned is not a benefit. Workers should be guaranteed that they will receive their money and not, like other creditors, be expected to suffer loss in cases of bankruptcy or receivership. Workers should not be forced to take risks with money they have earned through employment.

UFCW Canada believes it would be appropriate that the employee wage protection program secure the payment of wages, vacation pay, termination and severance pay. While workers should not lose benefits, we acknowledge that providing for the inclusion of benefits at this time would be very difficult considering the complexity of and variance in benefit coverage from workplace to workplace. The UFCW position is that workers should recover the wages, vacation pay, termination and severance pay they are owed, through a wage protection fund.

The cap (maximum \$5,000 benefit): While we are pleased that our concerns about the protection of wages, vacation pay, termination and severance pay have been addressed through the proposed EWPP, we are concerned about the proposed \$5,000 maximum limit. This limit might not be a problem for those who were seeking unpaid wages or small amounts of unpaid vacation pay, but \$5,000 will not go far when termination and severance pay are included in the amount owed to the worker.

The proposed program is a step in the right direction, but the \$5,000 limit should be revised, if not now, then according to an established review mechanism or schedule which you set out in the legislation.

Imposing a maximum limit means that workers who are owed more than the \$5,000 will still have to take a risk with the rest of the money that is rightfully theirs. Even with the employment standards branch of the Ministry of Labour making every effort to attempt to retrieve the total order of payment from employers, there is no guarantee for workers that the additional amount owing to them will be retrieved.

Financing the fund: The government has proposed to finance the employee wage protection program through general provincial revenues. UFCW Canada supports this proposal as being the best option available at this point in time.

Our main concern with regard to funding is that the employee wage protection program should continually have funds available to ensure that workers will not lose money they have earned.

Recovery: It is essential that the province implement effective methods to recover moneys owed by employers. These steps must be effective in recovering money, but at the same time must be administered in a fair manner and not burden good employers.

It is very important that the employment standards branch of the Ministry of Labour and its officers have the power to enforce the recovery methods set out in the legislation. Recovery methods must be effective and efficient enough to retrieve the total amount that is owing to workers, without delay.

In some cases, workers will be owed more than the proposed \$5,000 limit. In this situation it is imperative that

every effort be made to retrieve the total order of payment and not just the costs borne by the fund.

If you could flip over to one of the examples we include, it concerns Royal Dressed Meats, a beef slaughtering plant in Guelph, Ontario, that used to be part of our UFCW Local 617P. In 1987 Royal Dressed Meats, a beef slaughtering plant in Guelph, Ontario, declared bankruptcy. There were approximately 51 UFCW members working at the plant when it closed.

At the time of the closure, the company owed these members a combination of vacation pay, pay in lieu of notice and severance pay. Fortunately the payment of wages had been up to date. However, the amounts of money that were owed to the employees ranged from \$500 per individual to more than \$10,000 per individual.

The employees of Royal Dressed Meats, with UFCW Local 617P representing them, made claims against the bankrupt employer. The employees' claims were subsequently added to a list with approximately 150 creditors who all had appeals and legal action of their own against the bankrupt company. As a result, it took three years for the employees to receive any money.

After three years the employees of Royal Dressed Meats received 70 cents on every dollar owed. The money paid out to the workers and others had been in the bank for three years collecting interest. Had the employees received the vacation pay, termination and severance pay that was owed to them in 1987 when Royal Dressed Meats closed, the employees could have had their money in a bank collecting interest for them. Instead, these workers were forced to wait through a very lengthy and uncertain recovery process.

The workers at Royal Dressed Meats lost their jobs, as well as money owing to them, and were left without the necessary assistance required to make the transition to new employment.

This is just one example of a group of people who would have benefited from an employee wage protection program. The majority of these workers would have retrieved the entire amount owed to them from the fund instead of waiting three years, only to receive 70% of what was owed. In addition, the existence of such a program would have greatly improved the adjustment process for these workers.

I would like to thank the standing committee for allowing us to present the views and concerns of UFCW Canada and its members during this public hearing today on what we consider to be a very important and timely topic. UFCW is pleased that the government has taken an important and long overdue step in creating the employee wage protection program.

1030

Mr Arnott: Mr Connolly, thank you very much for coming in to present your concerns. I have two specific questions. The first is that you have touched a couple of times on the federal government wage protection initiative, Bill C-22, I believe it is called.

Mr Connolly: Yes.

Mr Arnott: Unfortunately I have not had a chance to study it in great detail. Can you elaborate on some of the

concerns you have with respect to that bill in that it will not adequately meet your needs?

Mr Connolly: Bill C-22 in comparison with the provincial one: Number one, we are concerned about the amount of money. The federal legislation does not go as far as what is proposed by the provincial government because it does not cover all four categories. The federal bill just covers wages and vacation pay, I believe, and does not go a step farther to cover notice of termination and severance pay itself.

Mr Arnott: The second question I have with respect to the example you gave as appendix A in Guelph is that I am privileged to represent the riding of Wellington, which is all around Guelph. I would think that there are people in my riding who may have been affected by this. The most repugnant example that we hear, and that I think we all feel the same way about, is when there is a bankruptcy, workers are owed wages, benefits, etc, and resources exist yet they do not get the money; they do not get what is owed to them.

I was just wondering, is this the most recent specific example of where your UFCW membership has been affected in this way?

Mr Connolly: No, it is not. We are having a lot of problems. I think some of them are going to surmount maybe into bankruptcy actions. Because of downturns in the furring industry we have East West where we have just completed the arbitration process in collecting moneys owed. We may be in the Supreme Court of Ontario trying to ensure the result of that arbitration, that our moneys are coming, but the employer really has not declared himself.

One of the other concerns I have is through Local 617P, the same local union that is used in this example, that JL in Hamilton is going to be closing the door now and going into bankruptcy. The difficulty there is that they have been a good employer with respect to paying the wages, and the severance and the notice to our members as they have been winding the plant down. The difficult situation we are going to be faced with in the very near future is that the local union president was informed that when it comes to paying all the requirements with respect to termination notice, severance pay, vacation pay, and possibly wages, we may be in bankruptcy court trying to get that money for the senior employees.

I think one of the other problems I foresee is when we have gone out and negotiated seniority provisions and collective agreements and you have your employer taking a long time going through the bankruptcy action. We could be left, which really concerns me a lot and which I probably should have addressed in the brief, trying to recover full moneys for a lot of the senior workers working in the plant. As they wind down, they lay off. We end up fighting for the more senior workers. On the federal level, we have had Taggart transport, the Bankruptcy Act and possible sale to Meyers. That is federal, and we have had others. We have not had that many, but we are seeing more on the horizon. They are starting to come to the surface more.

Mrs Witmer: Thank you very much, Mr Connolly, for your very sincere presentation. I appreciated that. You

talked about the financing of the fund, and you indicate that at the present time you were satisfied. What type of financing would you favour in future?

Mr Connolly: I guess I would still favour it coming out of the general coffers.

Mrs Witmer: As opposed to a payroll tax?

Mr Connolly: Yes, I favour that.

Mrs Witmer: Just one other quick question: Yesterday, expressed a concern about the two poles that business and employees seem to be coming from, the difference in opinion. Would you support the establishment of some sort of committee that would be comprised of individuals representing all people in this province that could take a look at some of these labour initiatives before the public had information about them? You mentioned that there is hysteria: reaction in the business community. I think that if some of these things were looked at a little more closely before the media got hold of them, there would not be this hysteria. I am wondering if you would support the establishment of such a committee that would be composed of people representing management, labour, etc?

Mr Connolly: Yes, I would not be opposed to the formation of that type of committee. Quite frankly, I think one of the difficulties is the initial reaction when you are talking about taking \$150 million to \$175 million to establish this type of program and this type of protection for workers. I guess that by the same token maybe the public should be made aware with respect to the number of companies that have left employees stranded with respect to moneys owing them. I think the public would be shocked.

Mr Huget: Thank you very much for a very informative presentation. I just have to come to a very brief point. In terms of the immediate effects on your workers right after that bankruptcy, could you give me some indication of how impacted on those 51 workers at Royal Dressed Meats?

Mr Connolly: In 1987, the job market was a little better. I think the worst thing was the uncertainty and waiting the three years, not knowing whether they were going to get anything. Needless to say, we had some relatively junior workers and some relatively senior employees, but it was primarily the uncertainty of their vacation and severance that we got most of the calls about.

I have to say this too: I think, if my memory serves me right, in that action there was roughly \$2 million that was available to a list of over 150 creditors. I think when it came to the employees recovering money, the only reason they got paid or they got adjusted in the end was because the initial \$2 million had been allowed to sit for close to a three-year period and accumulate the interest, which opened the door to another \$500,000 or \$600,000. By the time it got down through the whole list of creditors, because of the fact it had sat, that was one of the instrumental reasons they were able to get 70 cents on the dollar.

Number one, it was money that they were owed. It was the uncertainty and not knowing whether they would recover anything after it was all over. The pendulum could have swung the other way.

Mr Huget: Do you think it is fair for wages for working people, which are essentially bread and butter and go over their heads, to be treated in the same fashion as the other 150 creditors?

Mr Connolly: No. I guess it is just wishful thinking, but I am a firm believer that workers go ahead of financial institutions.

Mr Huget: There is some hysteria, I guess you could call it, from the business community in terms of the reception of this wage protection fund. Could you give me an idea of why you think that is, and why there was no hysteria over the fate of those 51 people at Royal Dressed Meats?

Mr Connolly: I think the hysteria is created by the employers as a result of—I do not know if this is a fair comment, but I am going to make it anyway—the financial liability that is being imposed if you are a director. I am not a firm believer that corporations will move to correct that liability that they are concerned with by reducing the numbers of directors or maybe terminology or the whole question of—you know, I do not know. There has been a lot of talk about the different amounts of money that it costs for the liability insurance, but not every employer is bad. We have experiences with various companies that we represent that have been very decent. They have closed the plant for whatever reason and have provided the employees proper notice and their commitment entirely.

I guess the concern from the employers' side with respect to the directors' liability is that maybe they are concerned that after the implementation of this, there might be a move to go towards an employer tax rather than a general revenue tax. That is about all I have to say.

The Vice-Chair: We are out of time.

Ms S. Murdock: You said we had four minutes. We have one minute left.

The Vice-Chair: I am afraid you counted from a different spot than I did.

Mr Offer: Mr Connolly, thank you very much for your presentation. It really does cover some of the very major aspects of the bill, and I do very much appreciate how you focused in very clearly as to what your position was on some of the concerns and some of the things that can be done in the future. I think that is going to be very helpful to us as we deal with this bill, and certainly through the clause-by-clause deliberations in the next few weeks.

My question deals with the \$5,000 cap and your concern, and also your position that workers should recover wages, vacation pay, termination and severance pay they are owed through the plan. The way the fund is currently structured, as you know, it is only a \$5,000 cap, and as such, the concern we have dealing with termination and severances is quite obvious. The question I have is, on principle, do you believe that the taxpayers of the province should fund, or pay for, the termination and severance pay of potentially every worker in the province?

Mr Connolly: Yes, I do. I think the taxpayer will not mind sharing in that type of liability. With previous governments, you may not have agreed, but certainly you allowed

some of the eccentricities of other governments. I quite frankly wish that I was in a position to be able to do something, not only with this but with bankruptcy legislation in general, to move workers ahead of financial institutions with respect to being first in line as creditors in a bankruptcy situation.

Mr Offer: Yes, we heard yesterday concerns about the whole question of the ranking in bankruptcy legislation. I certainly appreciate your response. We all recognize here that we do not have any jurisdiction to change that. We can only deal with what we have before us.

As you know, the bill as it was originally introduced made directors and officers—and I will take officers out of the frame for a moment—liable for the wages, vacation pay, termination and severance. Then it was amended to limit their liability to just wages and vacation pay. Do you believe in principle that directors, if they are to be personally liable for wages and vacation pay, should also be liable in that same vein to severance and termination?

Mr Connolly: Yes, I do.

Mr Offer: Though of course you are in favour of the legislation in principle as before us, you would rather have not seen those amendments?

Mr Connolly: Let me just say it so it is crystal clear. My position on that issue was that directors should be liable, and with respect to officers, I concur that officers of companies should not be liable.

The Vice-Chair: I am afraid the time for questions has expired.

Mr Offer: That is fine, but thank you very much for a very clear focus on this particular legislation. It will be very helpful.

The Vice-Chair: I thank you for your presentation.

Mr Connolly: Great. Thanks a lot for the time.

GROCERY PRODUCTS MANUFACTURERS OF CANADA

The Vice-Chair: Our next presenter will be the Grocery Products Manufacturers of Canada. They seem to have slipped out of the room for a moment. Would you please come forward and introduce yourselves to the committee and for Hansard.

Mr Fleischmann: I am George Fleischmann, president of the Grocery Products Manufacturers of Canada. I have with me Mr Bill Frakes, who is the vice-president, human resources, of Unilever. Also with us in the back is Sandra Banks, who is the vice-president, government relations, with the GPMC. Subsequently, during the question period, if you have any questions, any of us would be glad to help.

We welcome the opportunity to comment to the standing committee on resources development concerning the employee wage protection program.

The Grocery Products Manufacturers of Canada is a national association representing more than 140 companies engaged in the manufacturing and marketing of branded products generally available through retail and food service outlets.

The industry is an essential part of the Canadian economy. We represent approximately 10% of the gross domestic

product of Canada, as well as being a very vital link in the agrifood chain. In Canada, our industry provides just under 250,000 jobs, and I am talking about direct jobs. If you were to consider the spillover effect, there would be many jobs that we are responsible for in farming, in the packaging industry, in distribution and in advertising. The food and beverage industry alone ranks second to the automotive industry in Canada in terms of value added and in terms of its combined sales. The Ontario food processing sector itself accounts for just under 90,000 jobs, so it is a very large employer in this province.

In principle, GPMC supports guaranteeing earned wages to individuals who would otherwise lose them due to bankruptcy, receivership or abandonment of business. We do recognize the importance of providing income security to workers. Any initiative to do so, however, has the potential to impact other government programs, the deficit, the level of taxation or investment and jobs in the province.

We believe that the strongest protection for workers is to maintain a viable manufacturing sector in the province. As such, GPMC is concerned that the government's focus on labour reform and adjustment initiatives will not lead to long-term job retention. Indeed, it may hasten the flow of jobs out of the province and at the very least reduce current and future investment to the province.

GPMC's human resources council, which is comprised of the senior human resource managers of our member companies, such as Mr Frakes on my right, is following closely workplace initiatives proposed by the Ontario government.

Before we make specific comments on Bill 70, I think it is important that we do so within the context of the industry at large. What I would like to do first is give you a snapshot of where that industry is today and, in particular, where that industry is today in Ontario. I think this is important as we approach Bill 70 and as other pieces of legislation are developed, because we really should develop these in the context of the larger picture. What I am going to do is outline some of the priorities and challenges that our industry faces.

First of all, I want to say at the outset that we are committed to maintaining the greatest possible number of jobs in Canada and, in particular, in Ontario, which is the heartland of this industry.

It is important to remember, however, that three quarters of our members are transnationals and that all of these have facilities in both the United States and Canada, as well as in many other countries of the world. At the same time, it is also important to remember that most of the people running these operations are Canadians and these Canadian managers, believe me, have a fervent desire to maintain and indeed enlarge their Canadian manufacturing facilities.

We are committed to working with our employees and with their representatives to do everything necessary to enable us to survive in the open world market that is unfolding around us.

I notice that the previous witness was Kip Connolly of the UFCW. We have just had a meeting with Kip and with Cliff Evans, their president. We spent half a day with them

and the GPMC discussing these types of issues and how we can best work together. Indeed, we are having a subsequent meeting on August 16 to further these. I can say that the labour adjustment area and these are very much considerations we would like to come together to the government with in a reasoned approach.

We are committed to providing the highest level compensation and social and security benefits to our employees. We have to, because with the labour shortage that are just around the corner, how else are we going to be able to attract and retain quality people?

Just a word about how our industry is responding, some of the economic trends that we have been witnessing in the world, especially in the last decade.

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As we move towards more open trade, the result has been a dramatic restructuring of our sector in Canada. I want you to know it is not just the move to open trade there are very specific things happening in Canada that are causing this. I will just mention three of them that you should know about. Tight monetary policy, a high Canadian dollar and very high Canadian interest rates as compared to those in the United States all contribute to this restructuring. Of course, the end of domestic protection brought on by GATT's efforts to reduce tariff and non-tariff barriers as well as by the Canada-US free trade agreement have also been our impetus. This has resulted in major reconfigurations almost every manufacturing sector in Canada, especially, can say, in our sector, the grocery manufacturing sector.

It is interesting to note that the GPMC was one of the very few business trade associations that did not support the free trade agreement. We did not oppose the free trade agreement either. Our association took no position on it. We could not, because the potential consequences of the agreement were so diverse for our different members. One thing is for sure: We were concerned from the outset that while the agreement was going to open the border, input cost differentials resulting from programs such as supply management in Canada would remain.

Unfortunately, that is exactly what happened. To the consternation and frustration of consumers and workers and manufacturers, dairy and poultry prices are still much higher in Canada than in the United States. Indeed, in a recent study by the Retail Council of Canada on cross-border shopping, dairy products were the second most important incentive for shoppers to go across the border. The first was gasoline; the second was dairy. The high input costs as a result of supply management were a direct factor in this.

Every transnational company operating in Canada, whether Canadian- or foreign-based, is now deciding either to reposition to manufacture from a stronger base in Canada or else to pull manufacturing out of Canada altogether and supply the Canadian market either from the US or elsewhere offshore. The grim reality is that you do not have to make it here any more to sell it here. That is a fact.

Grocery distributors have also told our members that they are now purchasing more goods directly from the United States, bypassing Canadian manufacturers, because they are going to provide these products to their consumers wherever they can at lower prices. We are genuinely concerned

out this trend. Our objective is to maintain the strongest possible grocery manufacturing base in Canada, along with all the quality jobs that go with it.

Cross-border free trade with virtually no tariff or non-tariff barriers has forced every Canadian manufacturing operation to review its cost structure. Many of our members are even faced with the difficult task of having to compete for production runs with their own sister company plants just across the border. Bear in mind that many of these US plants, especially in the northeastern part of the US, have extra capacity so that their marginal costs of production are very low. You might ask where this extra capacity comes from. It is obvious. There has been a tremendous movement from the northeastern United States down to the Sunbelt, to states like Georgia, Florida, Texas and California. As a result, this has left tremendous excess capacity in many of the plants just across the line from us.

What we have to do in Canada to survive is limit costs in three areas, inputs, operations and administration, at the same time as we increase our productivity. If we reach levels comparable to our world-leading competitors in these areas, we are going to be able to maintain, and in fact enhance, the Canadian production base. If we do not, our jobs and facilities are going to continue to disappear.

In a barrier-free world, costs of manufacturing are compared and facilities are inevitably located where the highest return can be achieved. In our view, being competitive does not mean providing low-paying, low-quality jobs. Being competitive means being smarter and managing our businesses better than our competition. It is critical that the government play a role in fostering an environment that welcomes investment and renews business confidence.

Before turning it over to Mr Frakes for some specific details, I would also like to say I was very encouraged to hear Mr Connolly indicate in response to a question, I believe from Mrs Witmer, that the UFCW advocated continuing this kind of out of the general revenues of the government. This is a position we also very strongly support.

I would like now to turn it over to Bill Frakes to discuss for a moment some specific comments on Bill 70.

Mr Frakes: Before I begin, I too would like to add my thanks to the standing committee for this opportunity.

For those of you who may not be familiar with my company, Unilever Canada, it is comprised of 15 consumer product companies throughout Canada with over 10,000 employees in Ontario alone. Some of our companies include Lever Brothers, Thomas J. Lipton, Chesebrough-Pond's, Elizabeth Arden, Shopsy's, A & W and there are many more that go on. I think we have a pretty good cross-section of the consumer products companies that are represented in Ontario itself.

In regard to Bill 70, the GPMC recommends that all the amendments that have been put forward by the Minister of Labour earlier this week be included in the final legislation, particularly those related to directors' and officers' liabilities. As indicated in previous submissions, the GPMC supports the amendment that directors' liability be restricted to earned wages and vacation pay. The program should be viewed as a wage loss protection/replacement

fund, and therefore severance and termination pay should not be covered.

Additionally, given that the government is currently reviewing its severance pay provisions and other labour adjustment issues, changes in entitlement could have a significant impact on the liability of the fund. The GPMC also supports the minister's decision to limit directors' liability to debts, that is, unpaid wages and vacation pay, incurred during their term of office.

Regarding the question of financing, the GPMC is concerned about the financing of the employee wage protection program beyond its first 18 months, until which time it will be funded through the consolidated revenue fund. In our earlier submissions to the government, we indicated support for a system that would spread the payroll across the general fund and could not support an individual flat payroll or corporate tax. Clearly any additional costs of doing business will have a negative effect upon our ability to compete in the total North American marketplace.

The impact of the legislative action that is proposed must be viewed on the basis of two things: where our members compete and with whom. As George mentioned, almost 75% of our companies in the GPMC are multinationals. When we talk about competition, we are referring to two arenas in which we must compete.

The first is the marketplace. We must be able to provide our consumers with what they want, when they want it, at a price they can afford. If we are not able to do that, we will not be competitive.

The second arena in which we must compete is our own companies. We must be able to provide our stakeholders with what they want, when they want it, at a cost they can accept. If we are not able to do that, then we will not be competitive. A recent Canadian Manufacturers' Association report that was released in April of this year found that one half of its members surveyed had compared the cost of operating in Canada relative to the US. More than a third found that it was cheaper to operate in the US. If a company in Canada is unable to compete in the marketplace, it will lose its business. If an operation in Canada is unable to compete internally, we too can lose our business.

We urge the committee to consider the legislation in the context of the totality of the labour reform being proposed and the two arenas in which our businesses must compete. We are certain that all stakeholders would agree that the best wage protection is to ensure that businesses in Ontario remain vibrant and competitive.

1100

Regarding the process again, I would like to say we are very pleased to have had the opportunity to present our views today to the standing committee. The grocery manufacturers' industry is committed to providing high-quality jobs in this province. Towards this end, we have initiated constructive discussion with our major unions, as George indicated, so that we can collectively ensure a strong future for our industry.

We feel we have an important role to play also in the development of the process itself—pragmatic, progressive and workable policies. Given the challenging and volatile times we face, it is important that we set our priorities and

have achievable goals in the area of social justice initiatives. We are committed to participating in consultations on labour reform and continuing the discussions on labour adjustment. It is vital, however, that substantive discussions such as this occur prior to the introduction of any legislation. We thank you for this opportunity.

Mr Klopp: With regard to your preamble on the big picture, you said that during the free trade thing you were not sure which side, whatever, so you took no side. But as you go on in your discussions, you said you were generally concerned about the trends. Are you now supporting the idea that the government should get out of this free trade agreement and push against that?

Mr Fleischmann: We are definitely not doing that, Mr Klopp. What we are supporting is that the government should recognize that it is not just free trade and enhanced free trade with Mexico, but we are living in a world in which global trade is every day becoming an increasing reality. In the light of that increasing reality, the government should now do what it should have done before the free trade agreement was entered into; namely, readjust input prices and the way farmers are compensated so that Canadian companies will be able to compete effectively with competitors across the line.

Mr Klopp: It says here you do not want to provide low-paying, low-quality jobs. Correct?

Mr Fleischmann: That is correct.

Mr Klopp: Yet you are saying to farmers that what we are telling them is that they should supply us with low commodity prices so that we can make a profit.

Mr Fleischmann: That is absolutely not what we are saying. What we are saying to farmers is that the way that farmers should be compensated should be fairly, the same as it is in other countries of the world, as in the European Community and in the United States and in Australia and in Japan. In all of those countries, the consolidated revenue fund compensates farmers. In Canada, in the dairy and poultry industry, it is the consumers alone who directly subsidize the farmers in an unfair form of taxation, in that you and I and an unemployed person would each pay the same extra amount of money for a litre of milk in the store, part of which goes toward subsidizing the farmers. All we are saying is that they should indeed be provided with a decent income, but it should be done consistent with the way it is done in other countries of the world, so that the price of the input will be available to manufacturers in a competitive fashion.

Mr Klopp: I suggest to you, sir, that they are not being subsidized by the people. It is ironic that you want to say it is the consolidated fund and yet you do not want the thing to be passed through as it properly should be done with the poultry and dairy. In fact, the consumer is not so much worried as manufacturers are. They do not want to see government subsidize things, and the farmer does not. Those programs are working well. In the United States the farmers there are now asking for supply management. Indeed, in Europe they made one mistake. They did not create a supply management thing. They are looking towards those things.

I think to say here that supply management is causing the problem—the consumers have said many, many times that they think farmers should get a fair price for the product, and they will pay to the store, as long as the farmer gets it. Indeed, many of the reasons why White Farm and many of the companies have gone broke in the province is because farmers cannot buy new tractors. They cannot buy things. Indeed, your industry does well. In fact last week or two weeks ago in the paper, when every company keeps saying that it is losing money because of the recession, one of the food companies expounded on how it was making money. I do not think it is a surprise. No matter how tough it gets, we all have to eat, but I really think you are going at it wrong and I take exception to that.

Mr Fleischmann: Mr Klopp, with all due respect, assure you that we are not trying in any way to reduce farmers' incomes. What we are trying to do, and the consumers, and I think—

Mr Klopp: Is subsidize it by the government.

Mr Fleischmann: We are trying to make sure that our industry survives. When input prices for poultry and dairy are 50% or more higher than in the United States, it is very hard for companies to continue to manufacture here, where we no longer have the tariff and non-tariff barriers at the border.

Mr Klopp: So we have to put them back in place.

The Vice-Chair: You have about 30 seconds, Mr Murdock.

Ms S. Murdock: Thank you for your presentation. To summarize, you do not have any problems and you support Bill 70.

There has been no mention of the \$5,000 limit in the presentation. I was wondering if you have any comments on that. I am going to ask my questions all together so you can answer them. Second, on page 2 it says, "with labour shortages just around the corner." I wanted to know, in your particular area—I know it is very diverse—what kind of labour shortages they were and how they would affect your industry. Thirdly, presumably the workers you have are predominantly women. Is that correct?

Mr Frakes: I will try to address each question separately. The first is the dollar limit. I think we are more interested in what is included. The compensation would be for actual wages and vacation, not severance and termination. Now the dollar amount, \$5,000, if that is for wages and vacation, that is reasonable, but when we get into termination into severance, then we get into a totally different issue. So I think it is what is included versus the amount.

On the second question regarding the labour, I think what we have to do is look at the demographics as to where we stand today and what we can anticipate by the year 2000. My functional responsibility is looking at the demographics. Where will our workforce of tomorrow be, what should we anticipate and what will we need in order to attract those people? We are competing not only in a marketplace with our own internal companies; we are competing with other manufacturers, other industries, for labour. The demographics show that there is a reduction. That reduction means there are going to be fewer people to work. We have to be

competitive as possible in attracting those people into our workforce.

As for the breakdown, I can speak for my company. We have pretty much a 50-50 split of male-female. So it depends; it is not predominantly female.

Ms S. Murdock: I was just thinking in terms of—

The Vice-Chair: Ms Murdock, I am going to have to put you off. Mr Offer.

Mr Offer: I just want to get very clear your position as to the liability under the legislation. You clearly indicate you are in favour of guaranteeing earned wages to individuals. I take it that when you use the phrase "earned wages" you are talking about wages and vacation pay and excluding termination and severance.

Mr Frakes: That is correct.

Mr Offer: Right now, the fund will pay for that. The way it is funded now, it is the taxpayers. Is it your position that the directors of those companies should be personally liable, potentially, for those wages and vacation pay? Right now, under the legislation, they are. There have been people coming before us and saying that they should not be.

Mr Frakes: Our position would be that the legislation currently in effect is sufficient, as far as personal liability is concerned, for the directors. I feel like I am preaching to the choir converted here in that you hear a lot of emotional issues brought before you, examples that just should never recur. I guess we look at it from a general standpoint; we are looking at the totality of everything that is going on. Again, as I said, the best wage protection is to ensure that people have jobs. The concern we have is that we do not want to have a defeatist attitude that companies are going to go under and therefore we have to prepare now. We would much rather see an attitude of how do we ensure that our companies are competitive, not only in Ontario and Canada, but in North America and the rest of the world.

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Mr Offer: Thank you. I would like to pick up on the global trade you are involved in, the whole question of competitiveness in industries which you have clearly stated are very competitive. Do you see this legislation as one which will in any real and large sense impact on the competitiveness?

Mr Fleischmann: I think what you are trying to say is that each individual piece of legislation that adds to the cost of business in Ontario, that detracts from the bottom line or the competitiveness of the company, will ultimately affect its decisions on whether to stay or leave or increase operations here or decrease them. It is the cumulative effect of all of these. Therefore—Mrs Witmer, you were asking the previous witness about this—we would be very interested in sitting down with the government before these legislative packages are introduced and sitting down with the labour movement, as we have with the United Food and Commercial Workers, to discuss these in the totality of the government's program overall and what are the most important things it wants to introduce first and what can be brought in over time, etc, so that we do the

least possible to undermine our competitive position. That is the context in which we see this piece of legislation.

Mr Ramsay: George, I was wondering, is part of the uncertainty with this piece of legislation right now the future of the revenue-generating mechanism that could come in place, that you are worried about a payroll tax and that right now it is not so onerous as it is spread across the tax base?

Mr Fleischmann: Yes. That is exactly the concern we would have, because when we heard Mr Mackenzie discuss this initially, he was sort of assuring us that they would come under the government's consolidated revenue fund. Our concern and our pitch here and I guess the answer from the UFCW as well as ourselves would be that we would hope this would be a long-term assurance that the government would give us with respect to this particular piece of legislation and that it not come off as a payroll tax or any form of tax on the corporation itself.

Mr Offer: There is an important question that follows from Mr Ramsay's question and your response. In the legislation, there is a section that states that by regulation, as opposed to legislation, the government can prescribe other payments that are wages for the purposes of this bill and also can provide for increases in the amount of compensation which the plan can pay. I do not know if you have directed your mind to that, but the fundamental difference between regulation and legislation is, of course, legislation we are sitting here to discuss; regulation we read about it after a cabinet meeting.

I am wondering if you have not looked at that particular point. It is one that I would like to get your opinion on as to whether you are in favour of this particular section or moving this section into legislation. In other words, it cannot be done unless there is that guarantee mechanism for a discussion.

Mr Frakes: Definitely we would not want to see that in a regulatory consideration. By just the short description you gave and as far as what would be included, the amount, all of a sudden you have a brand-new, unknown factor that is thrown in any time we are trying to do business. Any time we have a cost, we have a factor there that someone else does not. It works to our detriment.

The Vice-Chair: Is it okay if I move on now, Mr Offer?

Mr Offer: Do we have more time there?

The Vice-Chair: You are running right at the limit; I think that you are actually at it.

Mr Offer: Thank you very much.

Mr Fleischmann: Could I just make one comment because I would be very concerned if you were left with the impression that in any way we wanted to undermine or reduce payments or in any way affect the farm community. The farm community is an integral supplier to our industry. It is the base of the whole Canadian agrifood chain. As Mr Ramsay knows from being the previous Minister of Food and Agriculture in the previous government, and as the current Minister of Food and Agriculture knows from our very frequent meetings with him, it is our intent to work through a consistent Canadian agrifood chain, and to the extent that any segment in that chain—and there are four segments: the farmers, the manufacturers, the distributors

and the consumers—is undermined, the whole chain does not work. So we would be very much for finding a solution that involves as fair payments to the farmers as it does to the workers, to the corporations or anyone else.

Mrs Witmer: I appreciate your presentation, putting it within the context of what is happening globally. Getting back to the consultation process, I think part of the reason for the concern about Bill 70 is that there was not an effective consultation process. I think that as a result the business community now is very concerned and sees other legislation being introduced and again a lack of consultation. What would you encourage this government to do in order to ensure that all voices are heard and listened to and taken into consideration before the legislation is drafted?

Mr Fleischmann: If I could answer that, I would like to suggest that in terms of what is going on in Ontario there is a tremendous commonality of interests between workers, be they in organized labour or not in organized labour, and the business community. We are now integrally linked together in the struggle for survival, and I would suggest that the government should involve those two groups in consultations with its own bureaucrats, with its own political staff, with its own members of Parliament and ministers, prior to introducing legislation in a public way that we then are in a defensive position in having to respond to.

I would like to suggest to you that there are many organizations in Canada on the labour side, on the business side, groups such as the Canadian Manufacturers' Association, the Retail Council of Canada, our own group, many of the organized labour groups, that really should be in consultation with the government prior to a discussion such as the one we are having today. If that could be arranged, I think we would come together in a spirit that would allow Ontario to have a very progressive chance at developing its competitiveness to a world-class level. What we are really asking for is the kind of working relationship that has been demonstrated in Japan and in Germany. They have been very successful as world competitors.

Mrs Witmer: Thank you very much.

Mr Arnott: Mr Fleischmann, I must say that I too have grave reservations about your comments about supply management, your implied suggestion that maybe supply management should be phased out. Supply management is absolutely essential and critical to the economic survival of my riding. I assume you are following quite closely, as I am, the GATT negotiations. It is my opinion that if there is to be a successful conclusion of those negotiations, the sort of direct subsidies that you talked about for American farmers, Australian farmers, European Community farmers, those sorts of things will not be legal. How would you respond to that?

Mr Fleischmann: I do not think supply management has to be phased out, Mr Arnott. I think what has to happen is we have to look at a second generation of supply management. Perhaps what we could have is a system where, first of all, most of the product of the farm gate goes directly in a non-value-added way to the consumer. I am talking about basically, say, chickens and milk as such. A certain percentage of it has to go to the processors for

value added further. There has got to be some arrangement looked at that would allow the farmers to sell product that is going to processors for further processing at some form of competitive pricing. Now, a recommendation to that effect had been made by the de Grandpré commission, you will recollect, in a chapter where they were looking at possible supply management changes to meet the needs of the new free trade era.

What we are saying is, we believe this could be done without undermining farm incomes. We believe there are ways. One of the ways, for instance, that was recommended by the de Grandpré commission on chickens was if you had a one-cent increase to the consumer, you could pay for all of the chicken required at open market prices to the processor. It is that kind of adjustment we are looking for. We are not looking to wipe out farm incomes or to phase out anybody. We need very much jointly to seek a common way to establish a fairer system that is going to allow the whole agrifood chain to thrive in Ontario.

Mr Arnott: I agree we need a fairer system. Something that struck me about a year ago was, I read that two cents or three cents of the total cost of a \$3-dollar box of Wheaties, for example, the cereal, has gone to the farmer.

Mr Fleischmann: There is no question that in certain products that are highly processed, much of the price is in the advertising and in the packaging. That is a function of competition. If the consumer wants it and if it could come in as an alternative from the United States, our choice is not to agree with that, not to manufacture it here and lose the concomitant jobs, which is nothing that we want to do.

The Vice-Chair: The time has expired and we have actually run over. It started with the first group, which took a bit of licence. I thank you very much for your presentation. It was most interesting.

Mr Frakes: Thank you very much.

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INTERNATIONAL LADIES GARMENT WORKERS' UNION

The Vice-Chair: The next group will be the International Ladies Garment Workers' Union. Could you please come forward and identify yourselves? Is there a group of just one person? If you could come forward and introduce yourselves for the sake of the members and Hansard, so that everyone knows whom he is addressing.

Ms Dagg: Yes. I am Alexandra Dagg, manager of the Ontario district council of the International Ladies Garment Workers' Union. To my left is Nola Havaris, an old-time union member. Sorry, am I going too fast?

The Vice-Chair: If you could move closer to the microphone when you are speaking, because it is being recorded. We have the same problem.

Ms Dagg: You must get a bad neck doing this.

To my right is Mary Said, a union representative from the Ontario region, and to my far right is Tariq Kidwai, our education and research representative, also of the union.

The Ontario district council of the International Ladies Garment Workers' Union thanks the committee for the opportunity to appear before it for consultation on this ver-

important issue. We are pleased to see that the Ontario government is making a real effort to listen to the concerns of the people of this province by holding public hearings in important issues such as wage protection for Ontario workers. Our union joins with all workers of Ontario to strongly support the Ontario government's proposed legislation to establish the employee wage protection fund.

We endorse the progressive principles underlying the establishment of this program, as stated by the Minister of Labour: "We have to take measures to increase protection for workers so that they do not become victims of circumstances they cannot control," and "Workers are entitled to receive the money they have earned, and they must be assured that this money will be given to them."

We support the establishment of the employee wage protection program because it is vitally necessary that workers of this province and all of Canada be protected against plant closures and that they get the moneys they are owed by their employers.

The magnitude of the recession, the extent of plant closures and unemployment are widely known. This has been extensively documented and reported by the media, various bodies of the labour movement and research organizations. We will not, therefore, belabour this point. Instead, we will focus on the lived experience of those affected by plant closures and the provisions of the government's proposed Bill 70 which are of concern to our members.

Our presentation to you this morning is in two parts. The first part deals with the need for the employee wage protection program; the second with the specific provisions of the proposed legislation: protection coverage, the appeals process and liability of company officers.

The need for the employee wage protection program: two main factors have contributed significantly to the spate of plant closures in recent years, as also pointed out by the Ministry of Labour in its discussion paper: the present recession and the commencement of the free trade agreement with the United States. The future inclusion of Mexico in this arrangement, the Conservative government's present objective, will only escalate this trend.

Plant closures have preceded the present recession and their incidence have been very substantial. The present recession has drastically compounded the situation, but plants have been shutting their doors to Canadian workers well before its onslaught. This has been well documented by the Canadian Labour Congress in its publication *Trade Watch* and by other community organizations, such as the Action Canada Network and Common Frontiers.

It is also important to note that these plants have closed permanently, never to reopen and never to create employment in future. Thus, what is frightening is that the jobs that have already been lost will not be recreated. The net result is that there is a trend of secular decline in the levels of employment in Ontario and the rest of Canada.

The garment industry is one of the manufacturing sectors most seriously affected by plant closures due to the recession and free trade between the United States and, in the future, Mexico. If this situation persists much longer, the garment industry will be annihilated.

The garment industry is facing severe international competition, specifically from relatively cheaper imports from Third World countries. Since 1973 employment in the industry as a whole fell by approximately 13,000. In the city of Toronto, 3,500 jobs have been lost in the period 1986 to 1990. Hardly any new jobs are being created.

Since 1988, in Ontario alone, 1,030 members, one third of our union's total membership, have lost their jobs due to permanent layoffs and plant closures. This has occurred in 22 different factories. Given the current state of the economy, more plant closures and permanent layoffs are on the horizon.

In July 1988, Best Outerwear closed its doors abruptly, going into receivership and then declaring bankruptcy. No prior notice of closure was given to the employees. Twenty employees were owed wages, vacation pay and termination pay in lieu of no notice of termination. The secured creditor collected all the money that it was owed; nothing remained from which the workers could get money that they were owed. The workers were owed over \$25,000 in wages alone. This amounts to approximately \$1,000 per worker, which is a very substantial proportion of their monthly earnings.

Under the existing law, the federal Bankruptcy Act, the workers to this day, three years after the plant closed, have not been able to collect the money they are owed. Under the proposed new legislation by this government, these workers would have been protected and able to collect this money that is rightfully theirs.

The following are more recent examples of plant closures in the garment industry and what the workers are owed.

In a span of two months, the end of 1990 and the beginning of 1991, after the onslaught of the worst depression since the 1930s as viewed from the eyes of the unemployed, three shops in the garment industry in Toronto—Russell Morin, Omega Apparel Ltd and J. H. Warsh—closed permanently, declaring bankruptcy. Over 100 workers, mostly immigrant women in their 40s and 50s who have worked as garment workers all their lives in Canada, lost their jobs, to which they would never return.

The first example is J. H. Warsh Ltd. This company was opened on Spadina Avenue in 1917. On December 5 1990, the Canadian Imperial Bank of Commerce appointed a receiver. At that point the workers were told they no longer had a job with this company. They worked a few more hours to finish the work in the factory and then went home. Many workers at this plant are over the age of 55 and have been long-term employees, some with as much as 32 years of seniority with this particular company.

The workers received no notice of layoff and no severance pay because at the time of layoff the company employed less than 50 workers. The company also owed substantial money to the workers' health and welfare fund and to the pension fund. The company, a manufacturer of designer sportswear under the label of a prominent American designer, Michael Kors, was continually unable to meet the onerous interest payments on its operating line of credit.

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Nota Havaris, who is with me today, is a very senior member of our union. She has worked at this company for 33 years as a sewing machine operator. Nota came to this

country from her native Greece 35 years ago. She began work as a sewer on the second day of her arrival to Canada. She had worked ever since, until she lost her job with this company. From her long service with the company, she is entitled to eight weeks' termination pay in lieu of notice of termination and 4% of her wages in vacation pay. She has not received any of this up to now, seven months after the closing of the company.

Nota's life has been totally disrupted and she is facing untold financial hardship. Nota's daughter's university education in engineering came to an abrupt halt. It could no longer be paid for and her daughter was forced to discontinue it in order to obtain a job to support the family. The employee wage protection program would enable Nota and the other workers there to collect the money they are owed.

The second example is Omega Apparel Inc. This company was initially to close down in October 1988, when the original owners were to retire. The plant manager and a partner bought the company and continued its operations but on a smaller scale. They employed 30 workers when its predecessor employer employed over 80, a job loss of 50 workers. In December 1990 the landlord of the building on College Street brought the bailiff to the plant to collect unpaid rent from the company. The company was unable to make the payments and declared voluntary bankruptcy. The workers there are owed vacation pay, payments into the health and welfare fund and the pension fund, and the union is owed outstanding union dues which were deducted from the workers' paycheques. Again, the employees would be able to collect their due under the employee wage protection program.

The third example is Russill H. Morin Inc. This company, a manufacturer of designer ski wear, closed in January 1991, also now in bankruptcy. Workers are owed termination pay. The company was unsuccessful in securing new financing arrangements. It was unable to meet its crippling debt payments due to high interest and sluggish sales to retailers.

Under the proposed legislation, Nota and all other employees would be able to collect money owed to them. Workers surely stand to benefit from this proposed legislation. These workers have suddenly lost their work, which they have been doing for decades, and their income. It is very difficult for them to adjust to the situation, which they have never experienced before. They face tremendous hardship. They can no longer maintain the same standard of living, they are unable to meet their financial commitments, they can no longer afford to purchase things as before and they are finding it difficult to provide even for the basic necessities of life for themselves and their families.

The affected workers in these plants are predominantly immigrant, visible minority women for whom garment work is, as has been aptly described, their first and only job in Canada. Most of them are sewing machine operators in their 40s and 50s who have diligently done this work for at least 15 years and as long as 30 years, for their entire life in Canada.

Many of these women are close to retirement age and most of them know little English. Because of this, it is virtually impossible for them to be re-employed either

within what is left of the garment industry or elsewhere. Most of these women have still not found other employment. The unemployment insurance benefits of many have ended and for the others will end soon. They search continually for work, but none is available. They have sought admission into government training programs but have been continually denied it since there are no available vacancies in those programs for another two years.

These people are socially subordinated and are the victims of oppressive social inequalities existing in Canadian society, namely, sexism and racism.

These women have traditionally depended on the garment industry for their employment and their livelihood. Their prospects of upward social mobility, the main plank of mainstream ideology, that all immigrants to Canada can make it if they work hard and persevere, are non-existent. Unemployment throws them to the wind and there are few prospects and opportunities for their readjustment and re-employment. They have a burning spirit to overcome the disruption their lives have undergone due to unemployment but all avenues for them to do so are closed.

The workers are angry, despondent and demoralized. They are resentful of the fact that they have devoted all their energies to improving their lives and the lives of their families and now they have nothing to show for it. They do not even get the money that is theirs from their employers.

The above examples clearly show the need for the establishment of a fund to compensate workers for the monies which they have not been given and which are their due. This is essential to help alleviate the financial loss they have incurred from the complete loss of their income. This money would be of great help to them in surviving in these very difficult times. Such a program would also greatly affect their morale, knowing that the government is genuinely responsive and sensitive to their situation and responds to their needs.

The provisions of the employee wage protection fund we now turn our focus to the specific provisions of the government's proposed legislation. This proposed legislation is one important and necessary step in redressing the distribution of power between workers and employers and other institutions. Furthermore, it is a step towards greater social equality and it acknowledges the rightful interests of working people.

Protection coverage: The employee wage protection program should comprehensively cover all moneys wages, vacation pay, severance and termination pay and any other moneys owed to the workers by their employers such as contributions to the benefit plan trust funds and the union benefit funds that are in the collective agreements. In the cases of J. H. Warsh and Omega Apparel Ltd, we will not be able to recover these costs. The coverage of the employee wage protection program should not be restricted to merely basic coverage, that is, to wages and vacation pay. Our members did not get vacation pay or severance and termination pay or the employers' contributions to the fund.

Under the existing system, workers who are owed wages vacation pay, termination or severance pay have recourse to the employment standards branch of the Ministry of Labour

employment standards officer has the authority to issue an order to pay against an employer for a maximum of \$10,000, but despite their best efforts, it often proves impossible to collect the money owing.

The present system is so structured and the provisions of the federal Bankruptcy Act are such that the workers have no probability of getting the money that is due to them. Once the secured creditors—usually the bank—who have priority over all other claimants have collected their share, there is nothing left for the workers. This has unfortunately always been our experience. In practicality, this situation is inadequate in providing genuine protection to workers. The new legislation will provide workers with better protection.

The appeals process: An appeals process for the timely processing of employers' appeals to the claims of workers for money owing to them must be an integral part of the employee wage protection program. If it is not, the practical implementation of this program would be ineffectual. Unemployed workers are hard-pressed for money, and an appeals process would ensure that their claims are resolved quickly. We support the idea that hearings will be scheduled within 45 days of the employer's appeal and that a decision will be made within 90 days of the initial hearing. We also support the idea that an adjudicator or referee hearing an appeal will be able to order an interim payment for any portion of the wages which is not in dispute.

Employers' liability: We strongly argue that the employee wage protection program legislation should include that directors and officers of business corporations be held liable in the event of workers not receiving moneys owing to them. It is very important that this be the case because this will serve as a deterrent to company officials denying workers moneys that are their due. Liability will prevent such cases from arising in the first place. We favour the notion, as originally put forward by the government, of an imposition of personal liability for the equivalent of six months' wages and 12 months' vacation pay on both directors and officers of corporations whose employees make claims against the program.

In conclusion, we support the employee wage protection program because it is necessary that workers be protected in these difficult times. We agree with the Minister of Labour when he notes that the employee wage protection program "an important step to strengthen the rights of all employees in Ontario" and "an integral part of the government's comprehensive approach to labour adjustment."

The employee wage protection program is an important step in this direction. We applaud the government's endeavour and look forward to the future establishment of a comprehensive labour adjustment program for the workers of this province.

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The Vice-Chair: Mr Offer, do you have any questions?

Mr Offer: It is more a comment than a question, just thank you for coming before the committee and sharing with us some of the real experiences that have been gone through. It is important for us as we go through the legislation

to recognize that we are not just looking at words on a piece of paper, but also talking about real situations that have so badly hurt a great many individuals. We are grappling with trying to make the bill as good as it can be. Certainly the comments and experiences which you have shared with us today will help us in that way, so I thank you for that.

If I might, in the last few pages of your presentation you speak to what the bill should be. As you may know, that is not any longer what the bill is, and I would like you to share with us your thoughts on what you hope the bill will in fact become.

Ms Dagg: I think I make it fairly clear what we would like to see. I think the plan needs to be introduced and made law as soon as possible, because these women are sitting here without the money and they desperately need the money now. So we are in a position where we want the bill to be passed as soon as possible so that it can be started.

Like I said, we would like to see maximum coverage of the moneys that are owed to the workers, a discussion about the retirement plans that are also being put in jeopardy because of bankruptcy situations, and a serious look at the liability question, which we think is really important as well.

Mr Offer: Just as a supplementary—and I recognize that—is it your position that the amendments as presented by the minister should be voted against?

Ms Dagg: I think, to repeat what I said, we want the bill to get passed. We are willing to try to look at ways to improve it once it has passed and once some of the people who have already lost their jobs receive some of the money that is owed to them.

Mrs Witmer: Thank you for your presentation. I would like to preface my comments by saying I understand where you are coming from. I say that because my parents were immigrants as well. I can certainly understand some of the menial jobs that you are subjected to as a result of not having the appropriate skills and language ability.

Although this bill is certainly going to help the women in your industry, I think you have pointed out a couple of other things; that is, the fact that there are no government programs available to help train these people for other positions.

If I take a look at my parents, the one thing they would always have wanted was to get another job. It was not to sit idle at home. But you have to provide these individuals with the skills. You have to provide them with the language training, and oft-times it is the lack of language skills that prevents them from getting another job. So it is important that the government recognize that although this bill is going to help individuals, I think what people want most is training and skills to enable them to get another job and get on with their lives.

Ms Dagg: Yes, I agree. I just want to make one comment on what you said. You called the jobs that we do in the garment industry "menial jobs"?

Mrs Witmer: No, I said that the jobs my parents were subjected to were often menial because of their lack of language skills. No, I do not refer to these as menial in any way, shape or form.

Mr Dadamo: I have several questions too. My father was an immigrant as well, stuck in a position where it was hard to grow in the job that he had, and he stayed pretty well where he was for many, many years.

Has your industry been in a nosedive for a number of years or—I guess what I would like to ask is, has free trade been the bombshell or has it really helped the industry come crashing down?

Ms Dagg: The industry has definitely been in a nosedive for many years. The mid-1970s was probably a real turnaround time for the sector, but the free trade agreement is rapidly escalating the trend that was already there. When we are talking about adding Mexico now, that is just continuing the escalation of what is already happening and quickening the pace of its demise. I know the federal government discussed in the free trade agreement that it would be a 10-year phase-out of tariffs, and that would give the industry time to adjust, but—I know we are not really talking about this—it really is not true, because the employers in the industry adjust right away, as soon as they know what is going to happen. They either get out completely or they relocate their production.

Mr Waters: You hit on an operative word in both cases, both in the submission and in what you just said: Mexico. I am curious to know how much of the work from here may have drifted down to that country.

Ms Dagg: It is difficult to track exactly how much is happening now, but I think that when you are talking about a country where the wages are \$4 a day, there is just no way that our larger manufacturing facilities, those that are making standardized garments in particular, are going to be able to compete with the large factories set up in the Maquiladora region in Mexico. It really bothers us when we hear the federal government talking about this. They obviously have no word on what is happening to real people in Ontario when they are discussing these kinds of policies.

Mr Dadamo: And we are well aware of that.

I wanted to ask one quick question. Nota is not here, but do you know how much she is owed by her former employer?

Ms Dagg: In total dollars?

Mr Dadamo: Roughly.

Ms Dagg: No, but eight weeks' termination pay at an average of \$600 per week, plus 4% vacation pay, which would be another \$1,200. So we are talking a couple of thousand dollars.

Mr Dadamo: At least. That is substantial. Okay, thank you.

The Vice-Chair: Does anyone else have any further questions?

I thank you very much for your presentation. It is always interesting to hear this aspect. I thank you for that.

GUELPH AND DISTRICT LABOUR COUNCIL

The Vice-Chair: Our next presenter will be Mr Watt from the Guelph and District Labour Council, whenever you feel ready.

Mr Watt: I would first like to thank the Chair and members of the committee for allowing the labour council to submit a brief on this very important legislation, Bill 70.

The council, in making this presentation, is extremely cognizant of the effects that sudden plant closures have on a community. We present two specific examples to demonstrate that this legislation, although beneficial to the employee, still allows employers who are devious—and we do recognize that most are not—to circumvent their responsibilities to the communities in which they do business.

In the spring of 1990—and I believe that date may be incorrect; it may be the fall of 1989—International Malleable Iron closed its doors for the last time, leaving many employees with nowhere to go. American-owned, this corporation left not only the employees high and dry but the community as well. Guelph has been left with an empty factory where the property is contaminated with heavy metals. Due to this complication—and I do not believe the situation has changed since the closure—we now have this memorial depicting the contempt certain people within the business community seem to have for the public at large. A point that out because nobody wants to touch this property including the banks or the city, because of the cleanup complication.

The second example of a gap that exists in current legislation deals with the Dayton-Walther corporation owned by Varsity. This plant went on strike, I believe, in the fall of 1988. The company, within a month or two after the strike began, mothballed the structure. All machines important for production were removed and the telephone system was gutted from the plant.

Apparently Varsity had an agreement with the government regarding grants and/or loans, dependent upon the number of people employed within the province. Over a year passed before severance packages were agreed to with the unions involved, and I think it was much more than a year—was going by memory when I wrote this. It was obvious to everyone involved that we were witnessing a plant closure yet due to the lack of legislation, people could only stand around and watch the pickets day after day.

I recognize that this is not within the mandate of the committee, but I am just pointing out what can happen with plant closure, that other legislation is perhaps required. We would recommend to the committee that these gaps be reviewed and that, if not in this legislation, then in the future they should be closed.

In reviewing the legislation, the Guelph and District Labour Council would like to now comment on specific clauses in the bill. Overall, the council commends the government on this long-overdue legislation. For too long workers in the province of Ontario have been impacted by decisions made within corporations over which they have had no control.

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Referring to section 40d in the legislation, it states that

"The program administrator and any person employed at the ministry to whom his or her powers and duties have been delegated shall not be required to testify in a civil proceeding or in a proceeding before any other tribunal

respecting information obtained in the discharge of the program administrator's duties under this act."

We recognize the protection that is required for the program administrator when civil proceedings occur. We question, however, the universality of this clause, as it could result in an employee not having the necessary evidence to win a case in which the administrator has been involved.

We respectfully ask the committee to review this paragraph so that all information required would be accessible to an employee who is proceeding with litigation.

Turning to part XII-B, liabilities of officers and directors, the council wishes to urge the committee to leave intact all liabilities under this section. For too long, decisions that affect the lives of working people have been made without any risk to the people making the decision. By enacting this legislation, the government will ensure that compensation for employees, who have usually given years of their lives to a company, will occur. Too often we hear horror stories where employees have been left penniless due to a bankruptcy or rationalization, and directors are busily negotiating what their settlement will be. It is also gratifying to note that 40% of this bill does not allow exemption due to contracting out.

The Guelph and District Labour Council urges the committee to recommend the passing of this bill through the Legislature as quickly as possible so that it will impact on as many people as possible. Thank you for your time.

Mr Arnott: Thank you, Mr Watt, for coming in to present your concerns about Bill 70. I just wanted to ask you a few questions about the case you have cited, International Malleable Iron Co. Just to refresh my memory, how many employees were working there?

Mr Watt: I believe it was about 260 employees.

Mr Arnott: Was there a gradual reduction?

Mr Watt: I think it was a fairly immediate closure, if memory serves me correctly. The owner of the plant, I think, came from Chicago from a fairly large, well-off family. I do not know all the details of that, but the plant was, I think, losing money, and it was an immediate closure with no warning to the employees.

Mr Arnott: No warning?

Mr Watt: I do not have any of the details. You can understand my problem at this time, trying to get people together, trying to find former employees. I would like to have done that for some personal testimonials, but I was unable to do so.

Mr Arnott: But it is your understanding that there were a number of people who did not receive—

Mr Watt: Yes. As far as I know, it was immediate, and certainly there were lost wages and what this legislation deals with. It is certainly my understanding that that did occur. It was a very sudden closure.

Mr Arnott: All right, thank you.

Mr Huget: Thank you for taking time to appear with us this morning. I just have a very general question. I wonder, from your perspective representing the labour council in the Guelph area, if you could give me an indication of how

widespread a problem this is in the Guelph region, of how many people are affected by the same type of circumstances in your estimation and what effect it is having on workers in general.

Mr Watt: I do not have any specific figure. I highlight these two examples as extraordinary because of the circumstances surrounding them, but I know that steelworkers especially are hit by a lot of small plant closures.

Guelph is basically a small manufacturing outlet, and we tend to make a lot of different parts for the infrastructure of automobiles and what have you, so over the last couple of years there have been a lot of small plant closures. But for me to come up with specifics, you must also understand that any examples we have are within organized labour. A lot of these plants are not organized because of the size.

Mr Huget: In ballpark terms, though, would you say it was a serious problem?

Mr Watt: I would say yes, we are talking maybe 1,500 in a community the size of Guelph over the last couple of years, and I am trying to be, if you will excuse the term, conservative—

Mr Huget: Never excuse a Conservative.

Mr Watt: —in that number, because these are fair-sized plants, and just a number of small plants that ended up by closing.

Mr Huget: In the situations that you have personal knowledge of, and given the type of economic activity in the Guelph region, is it your experience that most of the people who are affected by these closures and who cannot collect their money, are forced to go to the welfare system; or exactly what is happening there in terms of people sustaining life until they can get some money, if they ever get it?

Mr Watt: It has been a very difficult time over the last year with the recession and what have you, so we are talking about people who have basically gone in that direction in a lot of cases.

The Centre for Employable Workers has certainly been quite active, trying to come up with new jobs for these people. In that respect, I would say that the importance of training cannot be overemphasized. I think business really has to take a hold of that. They recognize that too, in the conversations I have had with members of the chamber of commerce, that they have not been doing what they should be doing and retraining employees.

These people have been doing the same jobs for several years and they are trained basically for one specific task; after that there is really nowhere to go, unless you get into some type of viable retraining program. There are lots of retraining programs out there, but I would sometimes question the viability of them in terms of what is going on at present in the economy.

Mr Huget: Just one final point: In your view, is the problem significant enough and this legislation important enough that it be implemented as quickly as possible?

Mr Watt: Oh definitely, there is no doubt whatever. Nothing I can say could in any way add to the personal testimonial from the little woman sitting at the end. That, I think, says it all. They talk about a lot of personal pain and

suffering out there that has to be dealt with, and just the whole emotional impact on these people.

Mr Offer: Thank you, Mr Watt, for your presentation. It is quite interesting that one of the examples he uses is Varsity. As I recall, it was last October when the Premier allowed Varsity to leave the province. At the same moment—

Ms S. Murdock: Allowed?

Mr Offer: —at the very same point in time he announced that there was going to be this particular program. I think he was also saying that there would be a reduction in the employment guarantee levels at a time when this province was experiencing the worst recession since the 1930s, so I really do appreciate the example which you brought forth. Probably without allowing Varsity to leave this province—

Mr Watt: I have not had any personal discussions with Victor Rice or anything like that, if that is what you mean.

Mr Offer: I remember watching the press conference. The Minister of Labour was not in attendance, and I have a good idea why he was not. But it is quite interesting that the example is Varsity: allowing it to leave the province, allowing the employment levels to be reduced, allowing it in the middle of the worst recession since the 1930s, and then throwing in this particular legislation. I thought it was pretty good.

Ms S. Murdock: They came and asked the Premier if they could leave.

Mr Offer: In any case, I could not let that go, it was a wonderful example.

Ms S. Murdock: Allowed? Use a different verb.

Mr Klopp: The previous government allowed.

Mr Offer: I just wanted to see if you guys were still out there, I had not heard you much all morning.

On the issue of the plan, you do not say whether the employees should be protected for their wages, vacation pay, termination and severance. I would like to get your

opinion on that, because I think it is important for us. Also I would like to get your thoughts as to whether that protection should be paid for by the taxpayers. The plan is currently funded by the consolidated revenue fund, which is taxpayers' dollars, and I would like to get your opinion on whether you feel that is an acceptable principle to be embraced in this legislation.

Mr Watt: To answer the first part of your question, would hope the legislation would speak to severance pay as well. Nothing is insulated, and in this legislation we are looking at federal legislation and the way it enacts the unemployment insurance program, in which severance pay is regarded as wages, so the waiting period is elongated. I think it is necessary in this type of incident—plant closure basically, which is so severe that we are not talking about a person who is prepared in any way to go out immediately and find a job in a week or two. I think there is a necessity for including wages, vacation and severance pay, with the rationale that people are going to require more time than normal—I do not know if there is any such thing as normal termination, other than election perhaps—but I would say that severance pay is a requirement.

The second part of your question: I think business has to take the responsibility, and I think a communal responsibility. I know they reject that, but perhaps if they did have that responsibility with regard to payouts on a communal basis, there would be more self-policing.

I mentioned in my brief that I am in no way trying to cast aspersions at all business people, but there are certain people out there who take advantage of loopholes and what have you. Perhaps if everybody was responsible there would be more self-policing of the whole situation when those things occurred.

The Vice-Chair: Thank you for coming in and for your presentation. Since the morning has now elapsed, we will stand in recess till 2 o'clock.

The committee recessed at 1201.

AFTERNOON SITTING

The committee resumed at 1413

The Vice-Chair: I am going to call the meeting back to order.

Ms S. Murdock: If I may, I would ask for unanimous consent to have the bill printed using ink, which would include the amendments.

The Vice-Chair: For our use in the clause-by-clause.

Ms S. Murdock: For our use in the clause-by-clause, because it requires five days to get that information printed up.

The Vice-Chair: Ms Murdock moves that Bill 70 be printed in ink, including the amendments, for use in the clause-by-clause.

Mr Offer: We will certainly give our consent. I understand that when they reprint the bill—it has nothing to do with consent—there is always a notation as to what is amended, correct?

Clerk of the Committee: Yes.

Mr Offer: So we will see the amendments in the bill, as it is reprinted. There will be some sort of a highlight of those, correct?

Clerk of the Committee: I understand, from talking to legislative counsel about this generally before, that they will make sure these notations are made so you can see the difference, because of course they understand that you have to know where these amendments are because we still have to refer to the amendments.

Mr Offer: It is my further understanding that as a result the government, because these are government amendments, would not have to formally move them in clause-by-clause.

Clerk of the Committee: Yes, they would have to be passed just as we would pass any other clause of the bill.

Motion agreed to.

PATTI PARSONS AND CECILIA GRANGER

The Vice-Chair: We will move on to our normal business of the afternoon. We are a little bit late. I would ask that Mrs Parsons and Mrs Granger come forward to make their presentation. Just take a seat there. For the members and for Hansard, perhaps you would introduce yourselves so that we know exactly who we are addressing.

Mrs Parsons: I am Patti Parsons.

Mrs Granger: I am Cecilia Granger.

The Vice-Chair: The floor is now yours to make your presentation.

Mrs Parsons: I received a phone call about a couple of weeks ago asking me to come down here and explain to you what happened with Granny's Chicken Coop. I worked with the company for about 13 months and all of a sudden it just closed up on me. I worked Friday night. I went in Saturday morning and everything had disappeared. I am a little nervous; excuse me.

The Vice-Chair: Just take a moment and relax. Take your glass of water. We do not bite. We are here to hear all sides of this. When we have an opportunity to hear some personal things, we understand that those things are upsetting at times, but they also give us some insight into how this bill will affect people's personal lives.

Mrs Parsons: There is a letter in front of you stating that they were going to give us one week's pay because they had just shut down, unnoticed by us. I had to phone quite a few times to find out where this money was coming from. It never did show up. As you can tell, that is over a year ago now.

They owed me five weeks' pay: it was two weeks' pay, two weeks' vacation pay and one week's severance pay. I had phoned numerous times to receive my separation papers and I asked if the money was going to be with the separation papers. It never did come. It was not with them. I phoned again to find out what was going on with our money and she said: "Well, it is coming. We just have a few loose ends we have to tie up." I said okay.

I received a letter later on from the Ontario Labour Relations Board stating there were no assets for it to be taken from, and I found out that when they were deducting our taxes from our pay they were not paying the government. When they had an auction for the materials they owned, the government had taken the money from the auction and there was no money left. That is why there were no assets to give anybody any money from.

Like I said, it has been over a year now that they closed and still nothing has shown. I went on unemployment. The unemployment said there were going to be three weeks off it because I was going to be receiving vacation pay and severance pay, and I received nothing.

At the time I lost my job, my daughter was a year and a half old. We had just bought a house. We had lived there a year. By the time December rolled around we thought we were going to lose our house because I had no money coming in.

Thank God, I got a job about two months ago. We are starting to make it again, but it is still pretty damn rough.

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Mrs Parsons: With all that time not having any money coming in, I will tell you that if it was not for Cecilia right here I would have had a hell of a long time trying to find my daughter diapers or even milk or anything just so that I could feed her. Cecilia has helped us quite a bit through that hell of a time. As to the time I had claimed for unemployment, it was about two months before I even got a first cheque. As I said, even now with Granny's Chicken Coop, she just claimed bankruptcy basically and said, "The hell with you." She said "the hell" to everybody. There were about 20 or 25 employees she had promised to pay, and never paid. There were only three of us who were married. The rest were all teenagers. I was the only one with a small child. The other one who had just got married did not have any children and the other person who was married had

two grown children, both in high school, capable of working to help with support.

The only income in my family was my husband who was bringing home maybe \$500 or \$600 every two weeks, which went right into the bank to pay the mortgage. Granny's Chicken Coop screwed a lot of people, and apparently there are still two Granny's Chicken Coops here in the Toronto area under franchise people who have bought the business. They do not have to go through Granny's to—they do not pay them any royalties or anything, apparently, so nobody with Granny's Chicken Coop will ever receive the money owing to them whatsoever.

Apparently the Ontario Labour Relations Board had gone through and did a bit of an audit on Granny's Chicken Coop books and claimed that on the separation papers it showed they had paid me the vacation pay and severance pay, which was \$1,000 before deductions. I never received it but the books say I received it. I have no proof to show them I did not receive it. I cannot even get my separation papers back from unemployment to show it to them, that it is there but it is not here. So there is nothing I can do. I am hoping somebody can do something.

The Vice-Chair: Do you feel up to a couple of questions on that subject?

Mrs Parsons: Yes.

Ms S. Murdock: If the company closed a year ago, Bill 70, if it had been in place, would have covered you for wages, vacation, termination and severance. It is not going to affect you now, you know that?

Mrs Parsons: I know that.

Ms S. Murdock: I just wondered from that comment whether or not you thought maybe that—

Mrs Parsons: Oh no, I understand that.

Ms S. Murdock: The other employees were mostly students or teenagers.

Mrs Parsons: Mostly students.

Ms S. Murdock: Were they mostly males or females? It is just that one of the comments that has been made in the past, yesterday and part of today, is that a lot of women are going to be affected by this legislation.

Mrs Parsons: Actually there were females more than males in the company, yes.

Mr Hugot: Thank you for taking the time to come down and explain at first hand the experiences you have had to go through, as unpleasant as they were. Thank you for telling us the way it is. I only have one very quick question. You mentioned in your presentation that there was an auction of assets and that the proceeds of that auction were to pay for taxes that apparently were deducted from your salary and not remitted to the government. To the best of your knowledge, did the tax people get their money?

Mrs Parsons: To the best of my knowledge, yes.

Mr Offer: I have no questions except to thank you for sharing your experiences with us. Everyone here recognizes how very difficult it is to basically go back and relive that. We are grappling with the bill and it is important for

us to hear from as many people as possible. I certainly do thank you for coming and sharing your thoughts and experiences with us because they certainly will be kept in mind as we deal with this bill to make it the very best bill it can possibly be.

Mr Arnott: I just want to say the same thing as Mr Offer. Thank you very much for coming in to share this.

The Vice-Chair: As Chair of the committee, I would like to thank you for coming. It takes a lot of courage to come here on your own without having a union or somebody else supporting you, just to come in as a citizen who has been affected. It is almost as bad, I think, at times for the people coming before us as the original experience. We do not mean to be intimidating and really we are not. We are just people like anyone else trying to do a job, so I thank you once again for coming before us and relating your experiences. Those things are very important to this committee.

1430

LABOURERS' INTERNATIONAL UNION
OF NORTH AMERICA,
ONTARIO PROVINCIAL DISTRICT COUNCIL

Mr Moszynski: I am not burdening you with a brief this afternoon. You will be receiving a brief later on today from the Provincial Building and Construction Trades Council of Ontario. The labourers' union is a member of that council and we subscribe to the submissions that are made in that brief. Very briefly, the labourers' district council is comprised of our 14 local unions across the province. We represent construction labourers in all aspects of the construction industry. There are upwards of some 35,000 members of our affiliated local unions.

I want to speak to you about fine-tuning this legislation to make it more responsive to the needs of the construction industry. I will begin by saying that we wholeheartedly support this initiative. The testimony you have just heard can be repeated by literally thousands of workers across the province. Thousands of our members have also suffered the same kind of devastation with the impact of the recession and otherwise. There is absolutely no doubt in my mind or in our union's position that this is a tremendous step forward, and I think certainly the government and all parties in the Legislature, in my view, can be proud of this legislation. There are some areas, however, that do require fine-tuning or adjustment to truly be useful to the construction industry.

Now you may well wonder, why should we treat construction industry workers any differently than any other workers? The answer is that the law already treats construction workers differently. We are not entitled to severance pay. We are not entitled to termination pay. We do not get the same maximum hours of work in a week. The existing structure of legislation treats the construction industry differently, and that is because past governments have recognized that the industry is truly unique.

The areas that require adjustment, in our submission, fall into two broad categories. The first has to do with dovetailing remedies with the Construction Lien Act. The

second has to do with contributions to multi-employer plans, which are benefit plans.

If we can talk about the Construction Lien Act first, Bill 70 now requires that a worker will be entitled to compensation from the fund provided he has both preserved and enforced his Construction Lien Act claim.

As you are probably aware, the Construction Lien Act remedy has been there for a long time. As the law now stands, you have 45 days after you last supply labour to a project to slap a lien on title when you have not been paid. You then have another 45 days, if the lien is not settled, to preserve that by commencing an action in the civil courts against the contractor and the owner of the property.

Preservation of the lien claim is not a simple matter, but it is relatively straightforward. You find out the legal description of the property. You find out the amounts owing and you enter it in the proper registry office. Then you have your other 45 days to commence your action, a law suit in the normal civil courts with all the delays and all the legal expenses that come with that.

You will notice that is a very different process than an industrial worker has to go through. An industrial worker, as I understand the projected legislation, will walk down to the ministry office himself or herself and it will all be done there.

Bill 70 requires that the construction worker institute the lien claim and preserve that lien claim. That is a much more complicated process and it is also a process that practically speaking requires legal assistance. This is not something a person off the street without legal training can do without much difficulty. It is fairly involved to take that first step.

If you require that the construction worker enforce the claim as well, what you are saying to her or him is that you have to go through your whole law suit and get judgement until you would be entitled to subrogation from the fund, until you would be entitled to get compensation from the fund, and that will effectively frustrate the intention of the legislation, which includes to a good part the desire that workers be able to get their money quickly. If you make workers wait until that lien claim has been fully enforced, you are effectively saying to them that they will not get relief from the fund for quite a considerable period of time.

In our submission, it would be appropriate to require construction workers to preserve their lien claim because there is nothing a property owner hates more than to have a lien claim slapped on his title. It encumbers his title to his property, and that is of course a considerable burden. He will want to have his title clear as soon as possible. In many instances where workers are unpaid, the owner of the property or the prime or general contractor will move heaven and earth to satisfy the lien claims as soon as they're put on the property. However, in many circumstances, it will not be done. The funds are not available.

The question that arises is whether you require that worker to continue to enforce that claim or whether the ministry will take over that claim once it has been preserved.

We would support an amendment to Bill 70 that would require only that the construction worker's lien claim be preserved. That will keep available the existing sort of industry practice or industry pressure to settle these things.

The Vice-Chair: In answering that for the committee, it is our understanding that there is a proposed amendment coming forward or that has been brought forward to address that concern.

Mr Moszynski: I have not seen that, but that is certainly a major concern and we would regard that as a major improvement to the bill.

The question that follows from that, if I operate on the premise that amendment will be passed, and I certainly hope it will be, is that you still then have the situation where the construction worker has been put to the expense of preserving the lien claim, and that, as I stated, requires obtaining a proper legal description and slapping that down on title. That costs money and we think workers should be entitled to be reimbursed, in an amount to be prescribed by regulation perhaps, for the expenses that are involved in preserving the claim.

These are not considerable by lawyers' standards perhaps, but they can represent a real expense to individual workers. Given that this is a step the construction workers have to take that other workers do not, it seems only fair, and is only fair, in my submission, that they be compensated for those expenses.

That is what I have to say on the lien issue.

The other big point for the construction industry has to do with whether contributions for benefits will be covered by the plan or by the fund.

As I said, construction workers are not entitled to severance pay, are not entitled to termination pay, and are otherwise exempted from the standard hours-of-work provisions in the Employment Standards Act. Construction work is very seasonal work. Our members do not generally work for an entire year in the industry because you just cannot build things with some of the weather we get. Wage rates tend to be slightly higher than in other industries largely to compensate for that.

The other really important thing about construction is that you do not have the long-term attachment to a single employer. We, like all construction trade unions, operate hiring halls. In any year, it is very common for many of our members to work for 20 or 30 different employers.

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What the industry has done to ensure that construction workers do have benefits, like dental benefits, vacation pay, drug plans and the whole gamut of benefits that are covered under the health and welfare plans and pension plans, for example, is that the industry has formed plans, jointly trusted by representatives of employers and representatives of the unions, to which all employers bound by collective agreements contribute. So if I am working for 10 different road-building companies in the course of one year, each of those companies will allocate \$1 an hour, will pay \$1 an hour, say, to the multi-employer plan that provides the benefits. Members accumulate hours in an hours bank. As long as they maintain sufficient hours, they will have continuing entitlement to benefits.

These payments are always made by the 15th of the month after the month in which the hours are worked. They are part of the total wage package. When construction

industry collective agreements are negotiated, if the prevailing wage rate is \$20 an hour and the increase sought or agreed on in collective bargaining is \$2, \$1 of that may go straight into the wage rate and \$1 of it may go straight into benefits: 60 cents to pension, 20 cents to welfare, 20 cents to training, for example. All of these benefits are run by separate trust funds, which are, as I said, jointly employer- and union-trusted.

In a construction industry insolvency situation, normally what happens is that the wages are paid, because the members will not run for three, four, five, six weeks without payment. What happens when there is no money coming in is that the employer stops making the benefit payments.

It is very important that these contributions, which are part of the wage package, be protected by this legislation, because otherwise the benefits to the construction industry will really not be that great. There are occasions when one week or two weeks of wages will not be paid, but by and large, the wages tend to be paid and the benefit contributions are not. It is very common when an employer finally goes insolvent to find that benefit contributions have not been made for a month, two months, three months back, depending on how diligent the union has been in ensuring that the benefit payments have been made or on how long the employer has been unable to make those payments.

In the six-week period leading up to insolvency, if the employer has first had the ironworkers in, he may have paid the ironworkers' wages but not paid their benefits. The ironworkers go off the job; the carpenters come in. The carpenters' wages may be paid, but again the benefit contributions are not. So there may well be cases where wages have been paid in an insolvency situation but the benefit contributions have not.

I understand that the legislation will not be covering benefits for industrial workers. It is very important, however, if this legislation is to be of benefit to construction workers, that those benefit contributions be paid. They are part of the wage package and really indistinguishable from wages in any significant way.

The other piece of that is that in our view the legislation should allow for the trustees of those benefit plans to bring a claim to the fund and to be reimbursed by the fund. It is the trustees who are aware whether the benefit contributions have been made or not and it is the trustees who should be in a position to recover those.

It is interesting that, at least initially, the new federal legislation appears to cover benefit contributions, and I am sure the government has no interest in being outdone by Ottawa in this regard. The benefit contributions we are talking about are the pension fund, the welfare fund, vacation and statutory holiday pay funds and training funds. Pension is very clear. Health and welfare is very clear. You may not be aware that is how vacation pay is accumulated in the construction industry. Usually 10% of wages are paid into one of these jointly trustee funds. We think they should be covered and we think the trustees of the funds should be able to come to the wage protection fund for reimbursement.

The same thing holds true for training funds, which are another unique aspect of the industry. They were developed

jointly by employers and unions because the community colleges generally could not provide the kinds of training that are required in the industry. Workers have chosen to put aside a proportion of their wages to pay for ongoing training through their unions, and that is a benefit to every worker. It is an allocation of their wages that workers have chosen to make, and we think that those training fund contributions are just like pension contributions or health and welfare contributions and they should be covered by the fund and the trustees of those funds should be able to come to the wage protection fund and get reimbursement when they have not been paid.

Subject to questions, that is what I have to say and I would be happy to assist the committee in any way I can.

1450

Mr Offer: Good to see you again.

Mr Moszynski: Good to see you, Steve.

Mr Offer: We have a certain history between us.

Interjection: Don't you want to talk about it?

Mr Offer: No, let John say that. When was it?

Mr Moszynski: I ran against Mr Offer in 1987.

Mr Offer: In 1987 John was the candidate in Mississauga North. We had an interesting election.

You have brought forward some new points we have not heard before, to be very frank. I guess my first question is, is this the type of submission we are going to hear from the Provincial Building and Construction Trades Council of Ontario later on, or is it going to deal with other areas?

Mr Moszynski: Mr Koskie will be providing a fairly comprehensive brief and it goes into the matter in some detail. I have tried to give you the high points.

Mr Offer: On the first point with the construction lien, there are proposed amendments which would take out of that section 40 the words "and enforce." So my understanding is there is no obligation to have to preserve and enforce, but rather to preserve.

But you brought forward the issue as to whether the registration costs, the legal costs in preserving the claim, should be part of this fund. I think throughout the bill there is this word "administrative" type of fee that is being used. I am wondering if the parliamentary assistant or ministry staff might be able to share with us whether it is possible that the bill as currently worded does allow for that.

Ms S. Murdock: No. The administrative fee does not cover what the presenter was discussing. The section that would apply, and that is what I was just looking for, would be the section that allows for regulatory change, and as I understand it, right now the industry and the ministry are still in negotiations.

Mr Moszynski: Yes. There is a concern here, as I understand it, on the ministry's part about, how do you quantify these costs? What kind of costs are we looking at per claim? To do a straightforward lien, you have to identify the persons and the amounts owing and make sure you get the legal description correct. They are not enormous costs, but they can be significant.

Mr Offer: If I might, just very briefly, are the benefit contributions something that could possibly be prescribed by regulation? I make no comment as to whether I am in favour or against it, but is it in fact a possibility that this might be a prescribed piece of coverage under the legislation? I do not know if someone can help me on that.

Ms S. Murdock: Could you say it again, Mr Offer?

Mr Offer: Mr Moszynski brought forward the whole issue of benefit contributions. When I read the legislation, it does not appear that they are covered, but it does appear that they are potentially coverable under the regulation-making power. I am just wondering if we can get an answer to that.

Ms S. Murdock: Yes. Subsection 40b(d), "such additional amounts as may be prescribed by regulation," covers any potential situation like that. Benefits are not covered federally or provincially under any legislation right now.

Mr Offer: Then the third question, again without passing judgement as to whether it should or should not be coverable, is that this may be another example where this type of issue, if it is brought forward, should not be part of regulation but rather part of legislation so that we can discuss that particular type and form of coverage. I think that maybe brings forward the point that this should not be part of regulation.

Ms S. Murdock: I have a comment in relation to Mr Offer's. I guess it is a question too. If in order to provide those provisions you are asking for for the construction industry it meant the entire piece of legislation would be held back pending that, is that what you would be requesting?

Mr Moszynski: That is kind of a big one.

Ms S. Murdock: I know. But you see the thing is, if we were to do it, as Mr Offer has suggested, as legislation rather than regulation, it definitely is going to hold up the legislation from going into the House for third reading.

Mr Moszynski: Our hope, a hope contributed to by informal discussions with the parties, has been that it would be covered by regulation. Frankly, except from the lawyers' point of view, we do not care where it is as long as it is covered. If the act is proclaimed without its being covered, as I said, its practical usefulness to workers in the industry will be there, but it will not be in my view nearly as much as should be done. I would hate to see the bill delayed for any reason. Coverage by regulation would be satisfactory, I think it is fair to say.

Ms S. Murdock: I have a couple of questions, because it is an area that is handled very differently from the industrial sector. Yesterday one of the presenters made a suggestion that private trustees be included to be allowed to be applicants to the fund. That is not the intent of the legislation. It is, I guess, open to discussion, but in the construction industry trustees are very different from the private trustees. I would like you to explain to the committee what the difference is, how they differ from the private trustee. I think I know.

Mr Moszynski: A trustee in bankruptcy or a receiver?

Ms S. Murdock: Yes.

Mr Moszynski: The concern of trustees in construction industry welfare plans is really non-partisan. It is in ensuring that the industry has skilled person power available and that benefits are available at a level demanded by the skilled workforce. Their interest is not in maximizing what can be secured from an insolvency for a private party in the way a receiver or a trustee appointed by a bank is. The interest of the trustees of these benefit plans is in ensuring that the workforce has the benefits that have been paid and they have no private interest.

Ms S. Murdock: I know we have been looking seriously at the whole idea of not having third-party applications to the fund, so therefore a trustee would not be allowed to be an applicant under the legislation. In the construction industry, the trustee stands in the place of the worker. At least that is my understanding.

Mr Moszynski: Yes. If that is what you were looking for me to say, that is certainly very true. They have no interest, other than the workers' interest, I suppose.

Ms S. Murdock: There would have to be some kind of explanation, I think, because you cannot just say that no trustees are allowed to apply to this fund without giving some differentiation as to the kind of trustee a construction trustee would be.

My next question is in terms of the proportion of benefits. Right now in construction liens, what is the proportion of the benefit applications as compared to the wage applications generally?

Mr Moszynski: You will be hearing more from Mr Koskie on this point. On the liens I personally have done, which tend to be only in absolute emergency situations, I would estimate that unpaid benefits would account for up to 45% of some applications, higher in others, you see. As I said, often the wages will be paid, but you will find that the benefit contributions have not been made for the last six or eight weeks. It really could be higher. I would not want you to rely on that figure.

Ms S. Murdock: No. I just wanted your own sense of it.

The Vice-Chair: Excuse me, Ms Murdock, I am afraid I am going to have to do it to you.

Ms S. Murdock: You are looking at the clock from a different angle than I am.

The Vice-Chair: I am looking at the fact that actually we have been over the half-hour, so at this point I have no alternative. I have to cut you off. I thank you very much for your presentation and for the different point of view that this group has.

1500

BATES AND McKEOWN

The Vice-Chair: The next group of presenters is Bates and McKeown.

Mr Yeomans: Good afternoon. My name is Steve Yeomans. I am with a company called Bates and McKeown. It is difficult for people who run small businesses in Ontario to keep informed of all the policies, regulations and legislation that affect the way we do business. Small businesses play a constant game of catch-up and respond.

We wish we had more in building our businesses than in slowing them down.

I have never before made a presentation to a standing committee of the Legislature. Like most people in small business, I do not normally have the time or the resources to prepare briefs to committees. However, we at Bates and McKeown heard about the Ontario government's proposed changes to the province's labour laws and were deeply concerned. Certainly if we were looking to start up a new enterprise today under the proposed laws, we probably would not. We decided that unless we made an effort to speak out now, we might find ourselves without a business to run and with nothing but time to make presentations.

Bates and McKeown is a small residential and light commercial renovating company. We started up in 1965 and were incorporated in 1969. The company is family-owned and -operated, is non-unionized and employs currently about 25 people, down from about 50 before the recession hit us. We employ office staff as well as journeymen carpenters and we have an apprenticeship program in place. We offer what we feel is one of the better benefits programs available, certainly the best in our industry that we know of in the city, and have always promoted our workers from within. Our apprenticeship carpenters stay with us and advance to journeymen, and many have become foremen.

We work both as a contractor on our work sites and we ourselves contract outside consultants and other subcontractors; for example, one part of it, on the design and engineering end of things, as well as plumbers, electricians and these kinds of things. Our company inspires a high degree of employee pride and loyalty, which is seen on each of our job sites and which we run as if they were our own places.

I am here today to give you a quick picture of how Bill 70 and the government's proposed labour law amendments would affect Bates and McKeown.

I have three simple messages: (1) Real consultation means that you must consider the economic impact of your proposed laws. If you do not, you will drive business out of this province; (2) Even with the government's proposed amendments to Bill 70, the bill has several flaws which will further damage business confidence in Ontario if they are not corrected; (3) The government is pursuing the wrong agenda. Instead of introducing new laws that will handcuff our economy, this government should take up the real agenda of economic renewal, which would benefit all of us.

Bill 70, as it was introduced in April 1991, came as quite a shock to the people who were working in the small businesses of Ontario. The government had promised legislation to ensure that individuals are paid owed wages, and I am sure most of us agreed that this made sense when so many businesses were being forced to close down and lay off their workers. What we got, however, was the directors' and officers' liability bill and an initiative that may still, in the end, put even more people out of work.

Word of the real implications of Bill 70 spread quickly, but it was difficult to believe that any government could come forward with a proposed law which was so fundamentally antagonistic to small and independent businesses.

When we heard about the new liability as proposed for directors, managers and officers of the businesses under Bill 70, we wondered how many workers would find themselves on the unemployment rolls. When we understood that the extended liabilities for directors, managers and officers were to follow them even after they had left the company and could therefore be dictated by decisions they had no control over, we wondered who would ever invest or work in a company in Ontario. In fact, we understand that the original bill would have made a number of our own workers liable for their own wages in the case of insolvency, a rather strange situation.

When the government said that it consulted widely in the preparation of this bill, we wondered who it was talking to; certainly no one trying to grow a small business in this province. As small businesses are strategically at the greatest risk of insolvency during recessions, it seems logical that a significant effort to obtain their input would have been made during the development stage. As elected officials, all of you have the added responsibility to consider the real effect of your actions. I suggest it would have been better for this government to consult before producing legislation, rather than afterwards.

Companies create directorships to provide guidance and leadership in growing businesses. A director's role is to help companies, large and small, to survive and grow in an increasingly competitive marketplace. Usually directors do not reap huge sums of moneys for their contributions. Often, as in the case of our company, they do not get paid at all. But Bill 70, even with its proposed amendments, has made existing directors, including myself, think twice about the risk of making creative contributions to the growth of Ontario's economy.

You only have to open a newspaper to see that Bill 70 has dealt yet another blow to the confidence of business, large and small, in this province. There has been little focus, however, on the additional effects of the bill with the government's proposed amendments.

In Ontario, the Ontario Business Corporations Act (OBCA), imposes personal liability on directors and officers for a maximum of six months for unpaid wages and 12 months for unpaid vacation pay owed to employees of a corporation. Proceedings against directors can take place only after a suit has been brought against the employer and where the employer has been found to have no remaining ability to pay for lost wages.

Anyone holding or considering a directorship in this province now needs to know that under the amended Bill 70, a new bureaucracy will be established to not only parallel the provisions of the OBCA but also chase down directors and issue them with orders to pay. A wage protection fund will be created to pay workers up to \$5,000, but not before a number of directors have been faced with personal bankruptcy themselves.

Director's liability is increased in a number of ways. First, as we understand the bill, the program administrator will now be able to commence action against directors before it has been established that the employer has exhausted its ability to pay. Certainly the bill is not clear as to what circumstances need to be satisfied before the program administrator

begins issuing orders against directors. I believe that it is fundamentally unfair for directors to be now put in a position where they may be found personally liable when it has not even been established that the company they served can satisfy the claim directly.

Second, the new program administrator will not be hindered by any of the rights and protections that are normally available to an individual director under most of our laws. Bill 70 waives the protections of the Statutory Powers Procedure Act, which means the director has no right to a hearing, no right to questions, cross-examination or to introduce evidence in his or her defence before an order to pay is issued against the director. Nor is there any provision, as in many other Ontario statutes, to suggest that if a director had practised due diligence in his or her actions this might be a reasonable consideration. I would hope this committee would at the very least consider amending the act to provide for consideration of due diligence.

Third, the time period for actions to be taken against directors is dramatically increased. The Business Corporations Act includes the requirement that actions against directors be brought forward in a reasonable time frame. Bill 70 extends the time period to two years, four times the existing period under the OBCA. Bill 70 therefore raises the risk for directors of ongoing liability for undue periods of time, even after they have severed all ties with the employer corporation.

There are other concerns that go beyond the clauses of the bill itself. One is the fear of the creation of a payroll tax to fund the wage protection fund at some time in the future. The Ontario government proposes to fund the wage protection fund from the consolidated revenues of the province of Ontario. However, the members of this committee will also be aware that on June 13, 1991, the federal government introduced changes to the Bankruptcy Act which would introduce a new tax on employers to pay workers of bankrupt companies for lost wages. We understand that the two levels of government are talking. It will come as no surprise to you that we are strongly opposed to the imposition of more taxes on small business. We simply cannot afford to stay in business when all our profits are paid in taxes.

I would hope that if possible this committee would pass an amendment to Bill 70 that would ensure that the government does not introduce a payroll tax to pay for the Ontario fund. In the aftermath of the GST, the employer health tax and the Ontario budget deficit, small business in Ontario cannot afford yet another tax. If, as some suspect, Bill 70 is a stalking horse for yet another payroll tax, let's stop it now.

1510

The Bill 70 experience has sent out a message to small business that the government is playing Russian roulette with our economy. The simple fact is that employers are now looking south and reconsidering investments that will create jobs here. The Ontario government cannot legislate job creation and the renewal of our economy, but it can create a climate that allows us all to prosper. This labour legislation is not the answer. We really believe that now is the time when you have the choice between an agenda that

supports economic growth in Ontario, or an agenda that supports economic growth in the United States.

As the Minister of Labour has promised to introduce changes to the Labour Relations Act in the fall legislative session, I would also like to make a few, brief comments on what we have learned from the Bill 70 experience, and how these further proposed changes would affect our company and others like us.

When we discovered that Bill 70 was only the first of a long line of promised legislative changes, we became seriously concerned about our ability to continue to operate in this province. The Bill 70 experience has taught us that we cannot afford to wait for this government to bring forward its legislation. We must ourselves be heard before the bills are drafted. We fear that even at this point, this may be too late.

In March of this year, the Minister of Labour put forward a list of some 30 areas where he intends to amend the Labour Relations Act. As with the directors' liability provisions of Bill 70, these proposed changes have been thrown on the table like some kind of bargaining position in a very large set of negotiations.

The recommendations that have come from the labour representatives to the Labour Law Reform Committee, if acted upon, would devastate small business in this province. They would, we believe, both remove any remaining incentive to stay in business in this province and preclude any thinking person from opening a new small business in Ontario.

Currently, the law is that employees are free to decide whether they want a union, without interference from either management or union. It is also the law that management is free to manage. The current legal framework has served all Ontarians well. The union agenda will upset the balance.

As mentioned, Bates and McKeown is a small, privately owned, Canadian company with a loyal, non-unionized work force. We act as contractors and we contract work ourselves. Consider just how a few of these proposals would affect our company.

Upon the posting of a notice of organization, union organizers would be granted virtually unrestricted access to Bates and McKeown's private property and, we feel, our clients' homes and offices, for the purposes of unionizing our employees. We could be required to turn over all our employee information, and we would be prohibited, by law, from communicating with our own workforce during certification processes. This is not only offensive to someone who has built up a private business, but if you think about it, it is ridiculous. I suppose we would need approval to invite our employees to a barbecue or to have one of our weekly site meetings.

During a certification drive, we would be further prohibited from disciplining, removing or discharging an employee. Presumably, if an employee was caught attempting to burn down a client's home, for example, we would have to seek permission before we could discipline him.

The organizing union would also be allowed to determine exactly who it was targeting for their bargaining unit. They might, for example, choose to organize only our apprentice carpenters, or maybe our part-time workers. They

might choose to organize one of each and then link them to similar individuals in other industries.

If only 20% of the employees wanted the union, the union counsel would be imposed on management and all the employees, even though 80% did not want the union. If 51% of the employees signed a union card, the union would be certified without a secret ballot vote, and employees who did not want the union or changed their mind would have no say.

Bates and McKeown could also become unionized simply through our existence as a contractor. It has been proposed that where a non-unionized company does work for another company which is unionized, collective bargaining rights and obligations would be extended to the first company, presumably without asking the consent of the company or its workers. These successor rights proposals, if ever enacted, would certainly put Bates and McKeown, and I believe a long line of others, out of business. We were most disturbed to learn that a bill to effect these changes may have already been drafted and approved by the Ontario government.

I have only to mention some of the changes which involve processes for organization and successor rights. Other proposals would force unionized companies to shut down during a strike, provide unions with confidential financial information and subject all management decisions to a third-party arbitrator's view of reasonableness. They would also preclude employers from communicating with employees during a strike.

While the Ontario union movement may believe these proposed changes are desirable to increase their dues-paying members, it is clear the real effect will be to put even a larger number of people out of work.

One of the key aspects of any real consultation is to evaluate the results of an action before it is taken. In our industry the Ontario government's proposed labour laws would force private employers, such as Bates and McKeown, to do one of three things: to close down and lay off workers, possibly move to the United States, or join a growing number of underground companies that currently cannot survive Ontario's taxes and legislation, such as Bill 70 and the proposed changes to the Labour Relations Act. In each scenario, we all lose.

We believe the Ontario government has another choice. The constructive choice for the Ontario government is to abandon its current labour agenda, and focus its considerable resources on activities that will support economic renewal in this province. We believe that the Ontario public shares this view.

The Vice-Chair: Seeing that you have actually eaten up all of your time, I will allow one very quick question from each.

Mr Arnott: Thank you, Mr Yeomans, very kindly for coming in today to present your case. How optimistic are you about the future of the Ontario economy over the next few years?

Mr Yeomans: We have mixed feelings. I guess it is sort of a roller coaster. Some things say it is going to look good, and then other things come along and we do not feel

so great about it. Our general feeling, and the feeling of other people, for example on the renovators' council, the Toronto Home Builders' Association, which we are very much involved in, and other similar kinds of organizations, is somewhat pessimistic. There is a lot of talk, not only in companies like ours but in other companies: What to do? Close up and go someplace else? Open up a new business someplace else?

The job of running a business now is not what it used to be. It used to be that we could focus on what we were doing; in our case, renovating houses and building houses and things like that. Now we are finding more and more time spent like today in preparing for this, doing other things that have nothing to do with our business directly. Quite frankly there is not the money in our business to support that kind of looking around and trying to do other things. We need to focus on what we are doing.

Already, as I mentioned at the beginning of my comments, our workforce is down nearly 50% from what it was a couple of years ago, so there are a number of people who are unemployed, and certainly within the construction trades in this city, unionized and non-unionized, there are a lot of workers who are looking for work.

Ms S. Murdock: With the journeyman carpenter apprenticeship program for carpentry—so it is building, I presume you are into building now.

Mr Yeomans: Yes, we renovate houses. We sort of update.

Ms S. Murdock: The previous presenter was explaining how the payroll system worked. Is that similar to what you do?

Mr Yeomans: Sorry, I did not hear all of his comments, just the tail end of things. We are not a unionized company, so some of the things that would apply to him as far as trustees and those kinds of things are concerned are not applicable. We are not obligated to offer benefit programs like medical and dental and those kinds of things. We have for a number of years. We just do that as part of building goodwill and a good workforce. We are not obligated at this point to do those kinds of things. Certainly, our apprenticeship program is something for which we wish there was more money and more support from the government. It is not quite the same thing as a unionized situation. We deal basically through the community colleges.

Mr Offer: As a representative of or a part of small business in this province, the creator of so many new jobs in the province, would your concern with the bill be lessened if there were some provision that the liability for directors in a small business, if that could be defined, were eliminated?

Mr Yeomans: As I understand the bill as it is proposed, one of the off-shoots, if you will, of the way it is, is that we would be looking for some kind of liability insurance or something along that line. Two things come to mind on that. First of all, if that were the case, marginal companies would probably not be able to afford the premiums, or be able to get it at all, in which case, what happens then is that for the directors the prudent thing to do would be to close up rather than risk their own personal situation.

Second, even if a company such as ours were in a position to do that, it is yet another cost of doing business that has nothing to do with the core of our business. What we are finding is that in looking at the cost to stay in business these days, the costs are getting greater and greater. Certainly, from our aspect, there is not an endless source of income. We cannot keep charging more and more. It is a very competitive business.

The other thing that is very key is that we are constantly competing with an underground economy. In our city it is very simple for a carpenter to leave a company such as ours, set up his own business and compete against us directly, paying no taxes, not being licensed and all of these other things. What we are finding is there is a bigger and bigger spread, especially through this last recession, between fighting an underground economy that has no controls and companies such as ours that are forthright, paying taxes and doing everything aboveboard.

We are losing our shirts. On so many jobs, guys are coming in at cost and below. How can we compete with that? How can we pay taxes? That is why our workforce has dropped by 50%, because we cannot compete. This would be yet another hidden cost of doing business.

(520)

TIMMINS NICKEL INC

The Vice-Chair: The next people we have are from Timmins Nickel.

Mr McIntyre: Timmins Nickel was started in December 1988 by two former Noranda employees. Since then we have developed two mines and currently have over 120 employees. Our Langmuir mine is the only new mine in northern Ontario in 1990 or 1991, and as far as I can tell in the foreseeable future.

We believe ourselves to be significant contributors to our community. Our contributions have been recognized in Timmins, and I have copied for your information an editorial about us in the Timmins Daily Press in January of this year. I would like to quote from part of it:

"Sometimes, it seems, people don't say enough about the businesses and individuals in Timmins who stick it out no matter how tough times get.... Businesses across the country are failing. But there are companies that step back, tighten their belts and keep operating, keeping on what staff they can afford, but at least providing a sense of continuity for residents of Timmins.

"Other companies pick up the gauntlet, look recession squarely in the eye and march boldly forward, not just surviving, but expanding. Such a company is Timmins Nickel... the Timmins Nickel people have faith in what the future holds for our city, and, for them, and for people like them, we're eternally grateful."

Our business growth has been accomplished through high productivity from our miners and our staff. Our stope miners are the key to our operation and make \$80,000 to \$90,000 per year, which is more than our chief financial officer. This is about 40% more than in union mines. What we get in exchange is multitasking from the stope miners. To do his job effectively, each stope miner must do his own plumbing, electrical work, sheet metal and mechanical

work, as well as his mining responsibilities. If he had to wait for a staff plumber or sheet metal worker, as is in the case in many union operations, the productivities in our particular mine would be so low that we would be out of business within weeks.

Following our editorial in the Timmins Daily Press in early February, we wrote nice letters to the Minister of Northern Development and Minister of Mines, the then parliamentary assistant to the Minister of the Environment, who was my MPP in Toronto, and to our MPP from Timmins, requesting a meeting to discuss our views on the mining business in Ontario. To date we have been unable to obtain a meeting with any of them. We are therefore grateful for the opportunity to discuss Bill 70 with this committee, although our concerns about the mining business in Ontario are much broader.

Let me make one other comment. As a small business, we have no government relations officer. To research and prepare material to make a presentation to you means that I am not doing pertinent parts of my job in dealing with customers, suppliers, financing, operations and the myriad details of running a small business.

My concerns about Bill 70 are quite simple. It has crystallized the entire issue of personal liabilities of directors and officers over and above the additional liabilities actually imposed by the bill. In the case of our company, this has particular importance.

As a publicly traded company on the Toronto Stock Exchange, we are required to have two outside directors. One of our outside directors resigned in January and we are now trying to replace him. Any candidates now inquire about liabilities.

Without being absolutely certain of completeness, personal liability for directors arises under the following legislation:

Under the Canada Business Corporations Act, failure to discharge duties as a member of an audit committee can lead to a fine of up to \$5,000 or six months' imprisonment. Under the Income Tax Act, directors are personally liable for withholding payments, CPP and UIC not remitted. Under the CBCA, directors are personally liable for up to six months' back wages.

There are both quasi-criminal and personal civil liability under the Mining Act. Under 1991 amendments to the Occupational Health and Safety Act, directors and officers can be personally liable for fines up to \$25,000 or imprisonment up to one year or both. The Canadian Environmental Protection Act imposes quasi-criminal liability on managers of the corporation which does not comply with national environmental standards. Non-compliance with the Transportation of Dangerous Goods Act can create personal liability for fines up to \$50,000 for a first offence and \$100,000 for subsequent offences, as well as imprisonment up to two years;

The Ontario Environmental Protection Act imposes quasi-criminal liability on directors and officers, as does the Ontario Water Resources Act;

There is probably something under the GST and there are various liabilities under the Securities Act;

Under the Employment Standards Act managers may be liable for fines up to \$50,000 or imprisonment up to six months. Under the original Bill 70 they were personally responsible for severance, termination, vacation pay and so on.

Despite being a small company, we have been able to obtain directors' liability insurance for wrongful acts. However, environmental liability and chronic health liability are excluded, leaving a major uninsured liability on directors. In addition, if the liability arises through bankruptcy, say, a decline in nickel prices or bankruptcy of one of our customers, eliminating our receivables, events beyond the control of the individual directors, it is not clear that the directors would be covered for civil liabilities for owed wages and vacation pay, etc. However, it should be understood that even this level of coverage requires a strong balance sheet and is not generally available to small companies.

The issue of directors' liability has an impact even on large companies when they run into trouble. For instance, someone acting as a director of Algoma Steel or a new company buying out Spruce Falls is incurring significant personal responsibility even if he or she is acting on behalf of a union. The contrast with the virtual total immunity for personal liability enjoyed by directors and officers of ministries and municipalities is really quite startling when you think about it.

With the wide variety of personal liabilities under different legislation, each change in the underlying legislation or regulations affects our personal liabilities. During the past year, these have changed at a bewildering pace so that it is virtually impossible to keep up with them. To give you a sample, there are amendments to OHSA in January; amendments to the Mining Act in June; a new land claim package with Indians affecting all land in the Hudson Bay watershed, including Timmins; the original Bill 70 in April; in February there is a mooted environmental bill of rights; in February, a federal green plan.

There were changes in the Environmental Assessment Act, assertions by the feds that they would use their environmental assessment review process if a permit is required under the Navigable Waters Protection Act or the Fisheries Act; the introduction of the GST; a new payroll health tax, increased workers' compensation; changes in the federal Bankruptcy Act covering ground somewhat similar to the Ontario Employment Standards Act; proposed changes to the Labour Relations Act; amendments to the Ontario Securities Act; amendments to the Environmental Protection Act, extending liability and now a possible new payroll tax.

Speaking personally, it is virtually impossible to operate a business effectively and at the same time remain up to date with the changes in legislation. The entire problem is exacerbated when each change in legislation affects your personal liability.

In reading this bill, I also note that the proposed program administrator is exempted from the Statutory Powers Procedure Act. This means the director has no right to a hearing, no right to question, cross-examine or even introduce evidence in his or her own defence.

On a personal basis, this Statutory Powers Procedure Act was passed as a result of recommendations by my grandfather, Chief Justice McRuer, in the early 1970s pursuant to a commission on civil rights in Ontario. I find it startling that an NDP government would curtail individual civil rights in favour of administrative expediency.

In order for our business to grow we need to attract outside directors of the best possible calibre. In the past, executives in the mining business have acted as directors of junior companies, partly because they enjoy the entrepreneurialism and partly out of a sense of community involvement. The motives are not entirely different from being director of an arts organization.

In our company, the financial compensation for outside directors is nominal; no quarterly fees are paid. Outside directors have been awarded options on 40,000 shares of stock at then prevailing market prices. By way of comparison, our mine foreman has an equivalent option package.

With the myriad risks an outside director is now exposed to, it is extremely difficult to create incentives to act as an outside director. It should also be noted that some outside directors function as specialists in finance or exploration. They are required to assume liabilities in areas such as the environment or mining practices on which they may have little or no specialist knowledge.

One assertion of supporters of Bill 70 and various other measures to increase personal liability for directors is that small companies will not be affected. In fact, the effect of these bills is exactly the opposite. Large companies can provide indemnifications to their directors; small companies are often poorly capitalized and may have less net worth than an outside director of substance. Further, if our company with a successful track record can obtain only limited directors' liability insurance, there must be thousands of companies in Ontario with no directors' liability insurance at all. The net result is to produce yet another chill in small business activity throughout the province.

1530

In passing, I would like to make one related comment on bank liability. Under various well-intentioned legislation, liability has been extended to banks if there are environmental claims against a property. In the case of our company, we operate so that we have virtually no environmental impact. However, it is hard for a bank to make, or believe, that assessment. As a result, it has become virtually impossible for banks to lend against mining assets in Ontario except to companies with other collateral.

At the start of my talk I recited an endorsement of our business by the Timmins Daily Press in order to establish our credentials. I wish to reiterate our view that our company has been a notable contributor to our society in difficult times.

Most directors of small private companies and public companies are not Conrad Blacks. We essentially live on my wife's salary as a public school teacher. I have invested more money in Timmins Nickel than I have earned since it was founded. I have put a third mortgage on our house. I drive a 1978 Aspen. I have no pension. If Timmins Nickel succeeds, then I succeed; if it fails, then I am out of luck. I resent that, above the other risks which I have taken, my

nouse should be held hostage to so many pieces of government legislation.

Two of my neighbours derive incomes from the public sector. My neighbour across the street works for the Ontario Ministry of Agriculture and Food. He is returning in August from a year's sabbatical in the south of France. He is contemplating early retirement at 55 on an indexed pension. My next-door neighbour is a professor at York University. He is about to begin a second sabbatical in seven years. His previous sabbatical was spent in England. My wife is absolutely bewildered about why I persist with our business. Fundamentally, it is that I do not want to be a bureaucrat.

I have obviously addressed slightly broader issues than directors' liability under Bill 70. In my view, there has been a significant buildup of problems under previous governments and under the federal government which have been crystallized by Bill 70. It appears to me that civil servants, comfortable with their own indexed pensions and total personal immunity from liability, have been very quick to assign broad personal liability to directors. In the process, we have created a liability chill that is a significant problem for us as a small business.

As a society, I think it is important that we determine exactly what is an appropriate level of liability to require of directors and I am very far from convinced that any thought whatever has been put into this.

On a broader scale, it is important to foster entrepreneurial business in this province. Virtually every operator of a relocatable small business that I know of is studying a move out of Ontario. If you are NDP, you blame it on free trade, the GST or the high dollar. If you are Conservative, you blame it on the Ontario budget, Sunday shopping or the NDP government.

Most small businessmen are not particularly interested in politics and do not have the time to engage in it. Rather than lobby like activist groups, they will simply move. As a citizen who is not interested in moving, I think it is an important economic issue for our province and somehow politicians have to come to grips with it.

Ms S. Murdock: You certainly stated your position really clearly. I just wanted to clarify a point under the Statutory Powers Procedure Act because, while it is true that prior to an order the SPPA is waived, once the order is made, the director not have to submit money, as the employer does, say, pending the decision of the tribunal or the court. Under section 50 of the proposed amendments, what you are saying on page 3 is not correct. Actually, I think the previous speaker had referred to that point and I lost out on time and could not tell him that, so I am glad you raised that issue as well.

A number of the small business people who have come in have noted their concerns regarding added costs. It is difficult to say. I guess the added costs I see are potentially 18 months from now, but I do not see any right now. So I have some difficulty in the additional costs at the present time to any of the business levels, given that the taxpayer is going to foot the bill for the next 18 months. But I will leave it to my loyal opposition there to make their comments.

Mr Ramsay: I would like to thank Stephen, also, for making the presentation. This is the type of presentation that all of us as politicians are going to have to start to listen to. I think it is interesting how you listed all the liabilities you suffer from, potentially, and listing also all the acts, all the regulations that regulate your business activity. One could almost feel that governments are waging war on entrepreneurial activity in this country. That is the effect I get when I see how you have listed all this together.

I must say I was part of a government that did a lot of good things, and as a person looking at these things, I did not look at the cumulative impact of what I was considering. I think it is telling for a lot of us in political life to wake up to what we are doing.

It is interesting to note, too, what you said about unions. Again, you have been able to find some efficiencies there that you are not able to do in a unionized operation. Of course, it is not politically correct to say anything bad about any group in society, but I think all of us, whether government, unions, people in the business community, have got to start to look at ways to be innovative and find ways to be competitive.

You laid it all out here and all of us have to take the blame for our lack of competitiveness. You are making a plea here to us as parliamentarians to wake up and smell the coffee, as the common expression is, and help you do your job.

Mr McIntyre: Actually, in terms of listing the liabilities, I will tell you something interesting. When I was preparing this I decided to make the quixotic task of phoning up the Ontario government and asking them what liabilities one would get as a director. So I phoned the Attorney General's office and they said, "Well, this is nothing to do with us." They gave me a consumer information number. I phoned the Ministry of Consumer and Commercial Relations and they thought I was trying to buy insurance.

Then I phoned the minister's office and they sent me to the companies branch. Then somebody at the companies branch said, "Oh, you're trying to find out about the wage protection act," and I said, "No, I am trying to get sort of a more comprehensive listing." They said, "Well, we can tell you about what your liabilities are under the Ontario Business Corporations Act, but you are on your own for anything else." I said: "Do you have any information even under that act? Do you have a brochure or anything?" They said no. Then I said, "Well, where would I find that information about other liabilities?" They just said, "Call your lawyer." To be honest, that is the answer I expected, but at some point you would think somebody should at least have a vague idea within the Ontario government, and what the net result was.

Mr Ramsay: It seems to me there needs to be a lot more advocacy by government on behalf of business people who are trying to generate the economy, and maybe that side we have not paid enough attention to.

Mr McIntyre: I do not know what the answer is. That is not my job; that is your job.

Mrs Witmer: I would like to thank you very much for your presentation. I am really impressed with the thorough-

ness of the research and I am disappointed at the difficulties you have had in obtaining this information, that even the government did not have this all in one place. Would it be fair to say, Mr McIntyre, as an employer at the present time and someone who has taken the risk and operates this particular company, that if it were not for the fact that your wife were supporting you, you would not be able to continue?

Mr McIntyre: I would have reinvested less money in the business, something that would have affected something somewhere.

Mrs Witmer: What would you suggest the government do with Bill 70?

Mr McIntyre: Where do you start?

Mrs Witmer: I hear you say you are concerned about the directors' liability.

Mr McIntyre: The minister said there is no additional directors' liability under this bill as compared to any other legislation. If that is the case, why even add one more set of clauses so that people have to figure out what it means? If it does not add any liability to any previous legislation, then why have it? It is just one more thing that people have to figure out.

If it does have additional liabilities beyond the existing legislation, then the minister has not exactly stated it right; it does have some additional. I cannot figure it out. I have other things to do.

The Vice-Chair: I am sorry, I am going to have to cut it off at this point. I do not mind sitting here, but we keep overrunning our time allotments. Thank you again for your submission.

1540

COMMUNICATIONS AND ELECTRICAL WORKERS OF CANADA

The Vice-Chair: The next group would be the Communications and Electrical Workers of Canada. You can just sit down and the clerk will distribute your brief. Could you please introduce yourselves.

Mr Martin: My name is D'Arcy Martin. I am a national representative with the communications workers. My colleague Leo Dowhaluk is with me. The two of us are here to talk about our experience as a union with closures and with the effects of closures on workers.

It is interesting: Steve McIntyre is a former classmate of mine. Were he here, I would like to emphasize one of the points we make, which is the distinction between what we talk of as productive investment, which is I think what he does, and speculation, which is what I think this act helps to stamp out. It seems important that we have, as unions, some responsibility for participating in the process of wealth creation and economic development in the province and that we engage in this conversation in that spirit.

What you have before you is a very short brief that comes out of years of experience. We will just leaf through it quickly so we have the time to deal with questions.

The first page lays out some perspective. We are a union that represents just under 20,000 Ontario workers. During the current recession, close to 20% of them have lost their jobs. Our members are in the telecommunications

sector and in electrical and electronics manufacturing places like General Electric, Mitsubishi up in Midland places like that, and at Bell Telephone, both in the operator and the craft.

We have dealt with a lot of closures and a lot of layoffs. What we are arguing is that the distribution of risk needs to match the distribution of power, that those who have authority over a workplace need to carry some particular responsibility in terms of the social costs of mistakes that happen. And those who do not want to insure workers and make sure they actually get adequate compensation in situations where mistakes are made would, it seems to us, have to offer workers a share of power in those decisions, which we do not find employers forthcoming with.

The bottom of that first page makes some specifically political comments. Those are around what we see as a pre-emptive strike by the militant wing of Ontario business launched before this government can effectively address the legitimate needs of its constituency.

We argue that Ontario needs a distinctive economic and social identity in the North American trading bloc that is now emerging and that this bill is a part of it. I think Leo will speak directly to some of our experience with closures.

Mr Dowhaluk: We have three examples in our brief about the experience of closures. I will only highlight one of them, which strikes us bluntly in the eye. It is the closure of Admiral Canada in 1981, where workers were told on November 4 at 1:55 pm that the company is going bankrupt and they have to be out the door by 2 o'clock, in five minutes.

The employees were led out of the plant. Subsequently they were paid the wages owed to them, but all the other things like severance pay, vacation pay and benefits are still outstanding after almost 10 years in court. There is no way to collect.

In 1982, Inglis Canada bought this plant from Admiral Canada, and they re-employed some workers with some ups and downs in the production. Ironically, this plant is closing in October, again. This time it is for another reason. We believe it is free trade. This time around we were successful with negotiating a settlement of severance pay, benefits and wages, but the outstanding issue of vacation pay and severance pay from Admiral is still outstanding and still before the court.

That is why we strongly support this Bill 70, so cases like that will not happen.

If you look at the last page, we enclosed from our experience some job loss numbers. As of January 1991, in total, in the industrial sector we lost 960 jobs, at Bell Canada 1,200 jobs, for a total of 2,160. That is as of January 1991. The figures are much worse right now in July 1991.

We believe this legislation should be implemented as soon as possible. This initiative will mop up situations like those from our old Admiral plant, which tend to embitter labour-management relations. Further, it will provide a floor of security for non-unionized workers, a counterweight to the anxiety that now pervades workplaces across the province.

Most important, it will serve notice to the least responsible employers that a new level of community standards

now in place in Ontario and that callous disregard of their obligations to employees will no longer be tolerated.

Mr Martin: We are speaking in support of the legislation, urging that it be implemented quickly. The fact that it is retroactive in its provisions is a help in that regard, particularly given what has gone on since last October in our workplaces.

In both the previous presentations, there was talk of other, connected, forthcoming legislation. The next to last presentation was remarkable in terms of the portrayal of labour law reform provisions. In fact, what is being suggested by that person is much more extreme than even the labour people have been proposing to government, which in turn is obviously much stronger than what the government is ever going to be able to put forward politically.

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I think there is hysteria around a lot of this, and what we are trying to do is to introduce into the conversation some straight talk about how we can deal with an increasingly volatile labour market without deadlocking politically and economically in ways that are going to drag us all down. What that is going to require is providing a floor of security so that workers and their organizations can afford to take part in a public policy debate. You cannot have dialogue with a gun at your head, and the situation now, where we tie up our resources for a decade to try to retrieve money that is clearly owed, where we are now going through a second round of closure with those same people, is intolerable.

We suggest that this government should be enhancing the security of employees particularly by developing training and other legislation that will give people portable and developmental skills training as a universal right, so they will have some educational capital, some skills they can use to protect themselves in a shifting labour market, and that this government aggressively promote a distinct identity for Ontario in the North American trading bloc. As happens, for example, in the European common market with several of the countries involved, there is no reason why a distinct identity, socially and economically, cannot be developed in this province which is attractive to certain kinds of investment—productive investment, not speculation.

We did not read you every line. We thought you could do that if you wanted to. We wanted to introduce a conversation.

Mr Offer: Thank you for your presentation. I want to try to get your position as clearly as I can. Obviously, you support the bill. But it is also—and I do not want to put words in your mouth; I would rather receive your position—in my opinion obvious that you do not believe this bill goes nearly far enough, that in your opinion what is required is not just the wage and vacation pay protection but also termination and also severance and that, in large measure, probably is not covered in this bill. I am wondering, is that your position?

Mr Martin: As you say, there are lots of things we would like in life. Some of them are not covered by this bill and we are not addressing them here. Is there a union agenda developed with our members around enhanced job security and greater compensation? Absolutely yes. We believe

there should be disincentives to employers to shut down. But the social costs of shutdowns should be carried more proportionately by employers than is now the case. That is true in much of western Europe, for example. It does not introduce rigidities. What it introduces is a situation where employers think twice before they toss people on the street and then have them recalled two months later, as happened for example in the Admiral case, where people as employers feel some long-term stake in the development of the community and the welfare of the workforce.

Now, for that to happen, it is has to be made expensive for employers to shut down. We are not talking here about punitive activity. We are talking about an economic strategy that rewards the productive investors in the business community and discourages those who are in for a quick hit and who are going to dump people immediately afterwards. That is a broader discussion, then, around what an industrial and employment strategy for the province would be. I would be happy to get into that, but we did come on the specific measures of this bill.

Mr Offer: My question, however, dealt with the specific measures of the bill, because we have the bill right in front of us, and the fact of the matter is that when the bill was originally introduced, it imposed on directors, and in fact officers, personal liability for wages, termination, severance and vacation pay. That has now been changed by amendment, but it was there. It was introduced in the Legislature. My question to you is on the bill. What is your position on the bill, as originally introduced, and on the amendments that were introduced by the minister?

Mr Martin: The amendments, as introduced, are ones which we find acceptable. Our concern is how a guarantee is going to be provided. Where the guarantees come from is a little bit like Steve McIntyre. For example, I am a director, in fact the treasurer of a non-profit community organization. If I were wearing that hat I would be introducing that. But in this mode what we are saying is, under the system of management rights, management also has responsibilities. Those responsibilities need to be exercised in ways that insulate workers from the effects of mistakes. How you do that is, as Steve would say, your problem.

Mr Offer: If I might, just on that point. The bill, as now before us, foists a larger potential obligation financially on the part of the taxpayers of this province generally and not, as amended, the directors. Do you feel, in principle, that the bill is correct in putting the financial obligation on the taxpayers as opposed to the directors?

Mr Martin: I would rather see it on the directors. Is that a straight answer?

Mr Offer: If it is your answer. I am the one who is asking the questions. I appreciate receiving your response to these questions. I think it is important that we deal with it.

Mr Martin: We are trying to deal with this in a spirit of openness. That is our preference. If it is not saleable, if it is imposing unjust burdens on individual employers, if it is creating a climate that is intolerable, compromises are possible. We are involved in processes of collective bargaining and social bargaining all the time. We do feel that those who have management rights should have responsibilities

to go with them. So that is our preference. If it is not viable right now, that's life.

Mr Ramsay: I was just wondering whether the presenters feel we can insulate ourselves from the vagaries of economic downturns, or any other conditions and daily challenges that the world presents us. What you are saying basically is that people should be guaranteed employment. You can have a situation where there is a tremendous downturn in the economy, as we have just experienced and still are experiencing, where a company finds itself without demand for its product any more.

Sometimes the prudent course for that company for its long-term survival is maybe to cease production for a couple of months in order to be viable in the long term. Companies should not be forced to produce a product when it is not in demand. We cannot as governments dictate business decisions for entrepreneurs in society. At the same time, we want to find a balance so there is social justice in the system, but I think we are getting to a point now where we can be crossing that line. We are feeling that somehow we can insulate everybody from everything, and I think we have to get back a little more self-reliance.

Mr Martin: The balances we strike depend on our experience and who we report to. I worked for 13 years as a trade unionist. I am exposed constantly to the pain and frustration of the relative powerlessness of those members in the broad economic decision-making process, and I would say that the quid pro quo for the kind of self-reliance you are talking about would be an inclusion of workers and their organizations in economic planning. Now, if we can talk about that, then we can talk about sharing risk. Until we do that, I think it is incumbent on employers to offer a degree of insulation, and a greater degree of insulation than they do now because, under the present circumstance, it is self-defeating for workers to commit themselves to enhancing productivity, enhancing the viability of the operation and enhancing the competitiveness of the society.

I see the proposal of Bill 70 as a way of enhancing the competitiveness of Ontario industries. That may sound weird in the context of the two previous presenters, but it seems me that in a high-wage, high-skill, high-flexibility workforce model it is logically required; but it will require a level of power sharing that Ontario management has not been willing to provide until now. I think that is a great historical opportunity.

1600

The Vice-Chair: I am going to have to jump in here.

Mr Ramsay: Ten seconds, just 10 seconds. Can I issue you a challenge? I think you are talking turkey, and I think that is right. I would challenge you to start entering those partnerships because I agree thoroughly with you. We have to start working together and get rid of that adversarial relationship for sure.

The Vice-Chair: We have to—

Mr Martin: The 10 seconds is only fair. You let him. We are involved in that kind of thing. We talk turkey, for example, in the electrical and electronic manufacturing sector directly between senior management and the union about the future of the sector. It makes them very uneasy;

they are completely unaccustomed to it and they have not had great support for it from outside. That does not mean the end of the adversarial system and its replacement by some abstract consensus—I mean social bargaining, where everybody keeps their identities and we make a deal that is in the interests of the whole society. I thank you for your tolerance.

The Vice-Chair: We have been somewhat flexible.

Mrs Witmer: Thank you very much. I am a little concerned about the presentation and also some of the responses you have made to the members from the opposition. Nowhere in here do I see a reference to consultation. I see this presentation as actually rather confrontational. I see you encouraging the government to forge ahead with the legislation without ensuring that all the people in this province are comfortable.

I am really concerned about that, because I think the reason the government got into trouble with Bill 70 is that there was not any consultation and there were a great many people in this province who had absolutely no input. As a result the first draft of the bill was changed because of the outcry and because it created a real air of uncertainty in this province.

I take exception, I would have to tell you, to the fact that you refer to business that leaves this province and business that is speaking out as speculators rather than investors. You talk about them walking away from their obligations. I want to tell you, I have many people in my community who are leaving or are considering moving and they are fine individuals who are looking after their employees; but they are very frightened by the economic climate, they are very frightened by some of the legislation that this government is proposing. I would say to you unless there is consultation, unless there is compromise unless committees are struck in this province, business is going to continue to go, and it is not because they are speculators. They are good, hardworking people, but they are frightened for themselves and their families and the fact that they could lose all of their money too.

I guess I would like to ask you, what type of consultation do you personally see taking place in order to ensure that we can have what you believe is necessary for this province so that everybody feels comfortable?

Mr Martin: I am not sure that the kind of transitions we are going through are going to leave everybody comfortable. I think there is a degree of dislocation involved for everyone and we do require, as was said in response to the previous presentation, some innovation on all sides and certainly among all economic partners, of which my union is one. I guess the reaction and the tone of the paper have to be located in the context of the virulent kind of response from a wing of the business community to these kinds of initiatives, and the real overreaction—to go back two speakers—to things that are now being talked about loosely as though they were already established legislation.

In fact, I think the climate of provocation—once it is set up, people can always find that it is someone else's responsibility to have initiated it. I think we are participating here in a constructive way. What we are saying is that a

system which punishes the most responsible employers and which rewards those who walk away from obligations, like the situation at Admiral—I mean, that is not simply rhetoric, that is a fact—that a new floor of community standards is required if there is going to be genuine consultation between people who have some reason to believe in the good faith of the others.

In situations where people are not delivering on severance pay, are not delivering on vacation pay, are shutting down and reopening a little while later 25 miles away, these kinds of situations are not conducive to long-term economic planning, nor to real, authentic consultation. They are scams. I would say there are people doing scams in government, in labour and in business. I am not talking about monopolies on virtue. But we need to have relations among business, labour and government that encourage responsible and ethical behaviour. I see Bill 70 as doing that.

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Mrs Witmer: But it is not going to eliminate what you have just alluded to. It is still going to allow someone to start up somewhere else.

Mr Martin: As in response to the previous person, I am just dealing with this little corner. That is what this hearing is about. If you want to talk about economic social bargaining and the future of partnerships in the province, I would love to come to that consultation. We were invited to this one.

Ms S. Murdock: Yesterday Leo Gerard was here for the steelworkers and made a representation. To be fair, the majority of employers in the province look after their employees. The ones we are concerned about are those employers who have opted to walk away or who, through no fault of their own, have had to close, and of course the ones that, through contrivance, as Mr Gerard said, have closed their doors and moved south. But his comment was that the provincial government should make it difficult for those companies that opt to move south, for instance, and operate at a marginally greater profit, that we should make it difficult for them to sell their products in the province of Ontario. Am I hearing you say somewhat the same thing?

Mr Martin: The question of what we do with them once they are gone—I am not going to worry so much about that. I would like to deal with those who are in the province still and those who are wondering about whether to leave, because I agree with you: there is a significant current in the Ontario business community, most importantly of younger entrepreneurs, who are considering leaving, and that is a serious problem.

I would just cite to you EEMAC, the Electrical and Electronic Manufacturers Association of Canada, which is doing a major study right now on competitiveness, in which the union is participating. It is finding in the course of it that a major structural problem is not wage levels and rigidities and lack of multiskilling; it is foreign ownership. No matter what the hell we do, if the head offices are going to shut down the plants in Ontario—and it has nothing to do with the NDP, although it will be a nice, cheap political vote for them to be able to use that. It has to do with

repatriating close to the home market and keeping the jobs close to home in the midst of a recession.

To deal with that kind of thing requires a range of policy options, many of which are in the hands of a provincial government; for example, creating alternative capital pools, mandating use of pension funds, promoting worker ownership. There is a whole series of possibilities which are positive. Punishing somebody when he is already in Raleigh, North Carolina, is not a top priority for me, but if it would help to create the community standards, then I am not against it.

My prime interest here is, as I said, rewarding responsible employers. To give a parallel or analogy, the current system is that employers who invest in training their employees have as a reward that the neighbouring employer raids their trained employees. That is their reward. That is the kind of system which leads you to say it is up to the labour people to save management from itself. That is the way I see it. I do not think it is good for the business community to have these people walking away from obligations, and embittering and terrorizing people in the workforce.

When I talk about anxiety in the workforce, it is there. Sure, it is there for structural reasons. It is also there because of the record of employers in just abandoning people and taking off, currently to the south. I think that is part of the distinctive nature of Ontario that we should not tolerate any more.

1610

Ms S. Murdock: Just one quick question, because I know the Chair is going to be on my case here, but in terms of industrial democracy, and I am looking particularly at Europe, another comment that was made was that people tend to forget that we in Canada have a southern giant as compared to the smaller countries like, for instance, West Germany, Italy and France, which have a very differing view in terms of their employee relations or labour-management relations. I was wondering if you could comment on that briefly.

Mr Martin: It seems to me that the combined East and West Germany is no pygmy economically and that the emerging European common market is big-scale in terms of the trading blocs of the next couple of decades. So I believe that within an emerging North American trading bloc, and even with the initiative of the Americas trading bloc, there is room for some diversity and that there is no need for us to hew to the lowest common denominator. It is possible for us to look to very much more progressive and innovative approaches, and that is a much better bet for a high-wage, high value added economy in which all of us and our kids would like to live than competing with, shall we say, South Korea or something of that sort.

What they found in western Europe is that they are capable of homogenizing things like exchange rates, and even free trade, unpleasant though it is, and maintaining control over telecommunications policy, control over cultural policy, control over labour relations policy. Those kinds of things do not have to be harmonized. There is no reason they have to be harmonized. If we are going to harmonize, let's at least harmonize up.

The Vice-Chair: I am going to intervene now.

Ms S. Murdock: I will just talk to him some other time.

The Vice-Chair: I thank you for your presentation, and I guess you will be involved somewhere down the road with some of these other things that keep coming up.

Mr Martin: I hope so.

The Vice-Chair: We will probably see you back here again.

Mr Dowhaluk: Thanks.

Mr Martin: This is the first time.

OWEN SOUND AND DISTRICT LABOUR COUNCIL

The Vice-Chair: The next presenter is the Owen Sound and District Labour Council, Mr Cooper. Welcome to the committee and, at your leisure, feel free to start.

Mr Cooper: My name is Greg Cooper and I am president of the Owen Sound and District Labour Council, and I thank you for this opportunity to speak to you on this very important bill.

The worker protection fund is something that is long overdue for many thousands of workers who, through no fault of their own, have seen the lives of their families devastated. Without warning and without cause, these workers are then further assaulted by not being paid money they have already earned. This is no reflection on the dedicated, hardworking people who show up for work day after day. It is, however, directly caused by the backroom, secret policies and deals of a federal government and the first ever made-in-Canada recession, and I thank this provincial government for trying to solve a problem it did not create.

I am also here to congratulate the Minister of Labour and his staff for the foresight and leadership in drafting this bill that will put the teeth in the Employment Standards Act. This bill will let the Employment Standards Act do what it was meant to do, protect the workers of this province, putting people before profits.

My plant closed in January 1991, without proper notice and without cause. It happened in that nice little gap just after Christmas and just before the Christmas bills start to come in. But our problems started long before January 1991. They started in November 1987. We were told by our then employer that it was no longer profitable to operate a machine shop, fabrication shop and foundry. They did, however, make arrangements to lease the business. We made many concessions to protect our jobs, as well as showing our good faith, commitment and dedication to our jobs. These concessions ranged to everything under the sun, from a wage freeze to a cutback in pension contributions to lost holidays to seniority.

But what of the many profitable years our former employer enjoyed? I give them credit for finding someone to take the business over, not because they did it out of any concern for our benefit, but because they were smart enough to unload their obligation for severance on to someone else.

The majority of the workers in this plant had between 20 to 40 years of service. Some of the rest were second- and

third-generation employees. We had a lot more invested in the plant than just jobs; we had a heritage. Yet we were taken to the curb like someone's garbage, after years of working in the dark, sunless, noisy, hot and dirty foundry. So you see our story is special, because we did not just go the shaft once; we got it twice.

The actual closing took place in January 1991 and it was the most underhanded sneak attack since Pearl Harbour. Notice was posted that the employees were laid off indefinitely. Realizing they had made a mistake and left themselves open to a Ministry of Labour investigation, this notice was replaced. The new notice stated that over 50 employees would be put on temporary layoff and a small number would be kept on to clean up some \$60,000 worth of castings that were left. This was while the company "restructured."

This layoff came directly on the heels of a period of work-sharing. This period of work-sharing came about at the request of the union, again showing our attempts to help the employer in every way. The employer was very aware that the layoff had bought him 13 weeks and left the union with its hands tied. At the end of the 13 weeks, when the Ministry of Labour investigation was started, the restructuring was complete. The investigation showed the cupboard was bare—no surprise, by the way. After all, the employer had 13 weeks to do a Harry Houdini with any assets that he may have had.

I will go as far as to say that in my opinion the closing was premeditated and that the employer kept his true intentions secret. The current Employment Standards Act was used against us, the very people it was put in place to protect. It has become obvious to all of us who were employees at this plant that the employer planned to close long before January of this year. While basking in the Florida sunshine, our employer commented to the local press, "Of course they were told of the closing." This statement is now, as it was then, a lie. While he enjoyed Florida with in excess of \$720,000 of our money, some 70 workers in Owen Sound had the winter of their discontent.

To truly put this in perspective, let's look at the community we come from, Owen Sound, just 120 miles down Highway 10 from here, a city with a population of 20,000 people, supported by a surrounding rural community. When our plant closed, nobody but the 70 employees and their families noticed. After all, there are only 70 of us, so no meetings took place to save our jobs. There are only four major employers in the area, and with scaledowns to meet the hard times we are in affecting even the strong workforces, the likelihood of finding other full-time employment was grim at best.

I am sure you can see the enormous effect this sneak attack on our pride and our financial resources has. I use the term "has" instead of the past tense "had," because many of us, in fact almost all of us, will feel the effects of this uncalled for and selfish act for a long time to come, as will our community and our families, from the bankers who hold the loans and mortgages to the local merchants to the already overloaded welfare system.

I mentioned at the start of this brief that this problem is widespread. There are many stories out there even worse than ours, but ours is the kind of story that does not draw a

of attention, which is why I have focused on it so heavily. You will hear from small to medium employers who will say this bill will break them. May I remind you that our employer is doing very well indeed. Critics will say that some briefs are trying to generate fear. I did not have to do that. Our story is not scary; it is real. I would be willing to say that there are at least twice as many stories out there like ours as there are ones that end happily.

There will be critics who will say that legislation like this will drive industry from Ontario. They will say that it will ruin investment confidence in Ontario. I have news for you. Look around since the introduction of free trade. The exodus of companies to the promised land to the south began long before this legislation was ever thought of. I would respond to these critics by saying that legislation like this will bring the kind of employers we need and want. They will be as committed as their workforce. For the first time ever, employers and employees will know where they stand under the law.

You will hear briefs from all branches of organized labour. Critics will say we only speak for 35% of the workforce. Let me remind you that if this can happen to us, with all our training, the benefit of a collective agreement and the United Steelworkers legal people, then imagine what is happening and will continue to happen to any unorganized worker who does not even have the benefit of a collective agreement and must depend solely on legislation. Further, I will say to you that the needs of the unorganized worker do not differ from those of the organized worker.

I wish you well with the passage of this bill, but be warned that watered down attempts to please both sides will not satisfy us. This legislation is a step in the right direction, but try to remember how far short of the actual money owed to a long-term employee the \$5,000 base rate is. The irony is that this is money already earned, and any attempt to let the boards of directors of profitable companies off the hook for the balance will be met with stiff opposition. In our consultation and in your final debate, remember that this bill is to protect the workers of this province.

I also have some concerns about this bill, however. The thing that concerns me most is the very real threat that upon receiving money from the fund, it will be clawed back by the UIC or welfare system. This will defeat the purpose of the fund, since this money should be able to be used to help the workers and their families in the transition period. This money will help to lighten the debt load so that families will be able to survive on UIC or welfare. This money is not a windfall, but is what is needed to help these families over the rough spots.

Truly this topic will be the centre of much debate in our committee, but try again to remember how far short of the money owed the \$5,000 limit is. These workers have gone through enough. Do not make a bad situation worse by letting this money be taken back. To allow such a thing to happen would only be seen as yet another tax.

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No delay in benefits or paybacks should take place. This would be easily done by creating a formula to average the severance and termination pay over the period of

employment and including it in the separation paperwork, because this is money already earned.

Further, do not let critics of this legislation sway you from the real teeth of the bill. I speak of the boards of directors of profitable companies. These people must be held morally and fiscally responsible for the workers, their families and the community. Workers must no longer be treated as doormats. We must put people before profits.

All this and we have only touched on the economic loss of the worker. Even greater than the economic loss they will endure are the many other challenges they will face; first of all, the extreme good fortune of being able to find other full-time employment. The workers now must start all over. Nothing they have done in the last 5 to 30 years amounts to anything. They will be put in a probationary time. They have no rights. They may be subjected to shift work, which could be very hard on older employees. They have now lost their pride, their security and their confidence. Starting over, for a worker who is 45 years of age and up, will be a large challenge.

Some people will say that this brief is slanted and one-sided to show our argument in the best light. Darn straight it was. We have people young and old waiting for in excess of \$720,000. This may not seem like a lot of people or a lot of money when you have finally heard all the briefs, but to the 70-some workers in Owen Sound, it is the difference between bankruptcy and survival.

Some of you will have sensed the hostility and bitterness in this brief. You're darn right we are bitter and fed up, and we have waited long enough for this help. Remember, these are people just like you, only they have to survive on \$15,000 a year or less. When employers talk about the bottom line, it is money. Our bottom line is survival.

There are eight million stories in the naked city; ours is just one of them. But it is the story of hard work, dedication and commitment on our part, repaid by an underhanded, premeditated robbery of over \$720,000. There is no use in trying to clean it up. That is what took place.

Each time you hear a story like this, I want you to reflect for a moment. I do not want you to just hear numbers. Connect each number with a face and then see that face directly affecting 3.5 other faces, a wife working part-time and two fully dependent children. See the faces and see them as lives, and see all the lives with a future. Then multiply all the faces by 3.5 times. When you have done all that, see yourself as one of those lives. It will be hard for some of you, but remember that is the only way to relate to the true bottom line. Also remember that the needs of the many always outweigh the needs of the few or the one.

I have come to you today because the hope we see in this bill is the only hope we have of getting what belongs to us. I have delivered this brief in the hope that you have not just heard me but have listened to me and the thousands like me and like you. We wish you God speed in the passage of this bill. I thank you and I invite your questions.

Mr Klopp: The previous speaker talked about how in his light he sees this bill as actually helping good employers from other people who may get in the business or are already in the business who will subvert the thing and take the money and run. Do you see that as the same idea?

Mr Cooper: I think it will promote better employers. It has to. Legislation like this has to stop speculation, as you said, the people who are just plain speculating for a quick buck, as our employer did. In my opinion and in the opinion of a lot of people who worked there, it was actually a done deal between our previous employer and this employer to shut down completely, leaving us all in the hole and nobody liable for any obligations whatsoever.

Mr Offer: Maybe by way of comment, on pages 5 and 6 of your brief you spoke about the fact that attempts to please both sides will not satisfy you, and I take it you are the labour council. Also, and I am reading from your presentation, "Any attempt to let the board of directors of profitable companies off the hook...will be met with the stiffest opposition."

You will know that the bill as originally introduced made directors fully liable for wages, vacation pay, termination and severance, and amendments were introduced by the minister afterwards which limited that particular liability. I make no comment on that except to say that it in fact happened, and I am wondering if you might share with us whether it is the position of your council that you are going to be opposing those particular amendments.

Mr Cooper: It would depend on how far off the hook they are being let. Unfortunately, in the political game mistakes happen. Letting the board of directors of profitable companies off the hook is a mistake, especially in our case. We were left high and dry. There is no question about that. He has over \$700,000 of our money that we earned and that he has to be responsible for. A lot of our people had a lot of seniority. If we talk about a certain fellow I know who has 47 years in there, he is entitled to 26 weeks, plus his eight weeks' termination, plus his holiday pay. If you are going to give him \$5,000 and say, "Now you can only get 15% of what is left," after 47 years a man has to see that as a slap in the face.

Mr Offer: I do not have any other questions, save just to say that I would recommend—only as a result of the very strong presentation you made, the position which was so clearly stated in here—and ask you to read the amendment to the legislation. It may be one which you might not agree with in light of this presentation.

Mr Cooper: I am quite certain, as I said, that any shortfall in the money that is owing to a dedicated employee like that is not satisfactory as far as we are concerned.

Mr Arnott: Mr Cooper, you talk about the speculators, and we do not particularly need the speculators. They can go south, whatever. What happens if, as it turns out, the speculators comprise 10% to 20% or even 5% of the businesses in Ontario and our unemployment rate goes up to 15%? Where is the job creation going to come from? What are we going to do then?

Mr Cooper: Job creation will come, and it will be better job creation as the socioeconomic structure, as was explained by the last brief, improves, and it will improve under legislation like this as the speculators do go south. Ontario still has a great many things to offer, and as long as we can focus on that and focus on getting employers that are as committed to their workforce as their workforce

has been to them for years and years, then those are the kinds of employers we need in this province to build our economic structure.

Mr Arnott: New investment requires someone putting forward his after-tax dollars to create jobs. I am just not sure in your answer where that is coming from, the new investment, the money.

Mr Cooper: I think you do have a number of committed employers in this country now, and we are not talking about the multinationals and we are not talking about the small employers like ours was. We are talking about truly committed people, the Canadian-owned, grass-roots kind of business that is going to spread throughout this province—there is no question in my mind—in the next five to 10 years. That is where we need to focus and that is the kind of economic structure we can spread.

Mr Klopp: Just to help my colleague with regard to the government amendments, directors will still be liable for up to six months' wages and 12 months' accrued vacation pay as it stands so far. I just wanted to clear that up for you.

Mr Offer: If that is the current legislation under the Ontario Business Corporations Act, the fact of the matter is that when the bill was originally introduced, directors were going to be ostensibly personally liable for wages, vacation pay, termination and severance. The minister, after a great deal of concern raised by opposition members—you may not agree with this—and by opposition members in the third party, introduced amendments that just said that directors would not be liable for the termination and severance. That took the directors off the enforceability hook under the legislation.

Mr Cooper: As I said, under the political game, unfortunately mistakes happen and that amendment was a mistake.

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PROVINCIAL BUILDING AND CONSTRUCTION TRADES COUNCIL OF ONTARIO

The Vice-Chair: The next group coming before us is the Provincial Building and Construction Trades Council of Ontario. Perhaps you could introduce yourselves for the benefit of Hansard and the members prior to your brief.

Mr Koskie: My name is Raymond Koskie. I am legal counsel for the Provincial Building and Construction Trades Council of Ontario. To my right is Joseph Duffy, the business manager and secretary-treasurer of the council, and to my left is Fiona Campbell, a member of our law firm. We appreciate the opportunity of appearing before you today.

The council represents over 100,000 construction workers in the province, and as you know the construction industry is perhaps the largest industry in this province. We want to compliment the government on the introduction of this long overdue legislation. It will help many employees, particularly those who have been unemployed because of the current economic situation.

While we applaud the government for this progressive legislation, we do have certain concerns that we wish to refer to, and they are four in number. We have summarized them in the executive summary of our brief, and I think I

an deal with them quickly and let you ask any questions you may have.

First, we are speaking here today on behalf of the construction industry. The construction lien has been a tool of the worker in that industry to recover unpaid wages and contributions to the employee benefit plan trust funds. However, in order for a construction worker to file a claim under the employee wage protection program, the act as it is presently worded requires that the worker must not only reserve a lien claim, but he must also enforce that claim. In discussions we have had with the representatives from the ministry, who have been very co-operative in consulting with us and speaking with us, we understand that this is no longer an issue and that any reference to enforcing the lien claim will be deleted. Therefore, our understanding is that all that is necessary for a worker to be able to file a claim is to register a timely lien.

With that understanding, I will proceed to the next and perhaps more important concern we have, and that is in respect of the definition of "wages." As you know, the bill in the definition section of "wages" makes no reference whatsoever to contributions payable by an employer to the many employee benefit plan trust funds. As you perhaps will appreciate, the contributions to these trust funds, such as pension plans, health and welfare plans, training trust funds, etc., represent a very substantial part of the overall wage package and can sometimes represent up to one third of the overall wage package.

You should understand that in the construction industry the actual take-home wage is really the smaller part of the concern, because workers in the construction industry rarely, if ever, work more than one week or perhaps two weeks before they realize that their paycheques have bounced. They simply will refuse to work thereafter. What has concerned us over the years are the contributions to these trust funds. I will not go into a lot of detail with you on this, but at page 6 of the brief we talk about the make-up of the wage package and we take the position that contributions to these plans are simply wages in another form.

In tab 2 we have appended pages from various construction industry collective agreements which show you the breakdown of the wage package. If you look, for example, at the first agreement, which is the Labourers' International Union of North America, Ontario Provincial District Council agreement, and if you look at the part we have taken from that, you will see article 5, the rate of wages of waterproofer. You will see that the wage rate is \$22.83. That is the take-home pay, and then there is vacation pay and then welfare. That is 92 cents an hour. I apologize for the small print, but the employer will contribute to these health and welfare funds 92 cents per hour worked by each employee. Then there is the pension, which is \$1.30 per hour. Again, these are all employer contributions to the jointly administered trust funds.

Then there are worker dues and there is the training fund, which is another employee benefit, and you see the contribution there is 10 cents per hour, and then there are dues, and then employer industry funds. Those are all the amounts that make up the total wage package of the construction worker. It is in the area of the trust funds, and

when we talk about those at page 7 of the brief, subparagraph (a), we go into a little bit more detail as to what these funds are.

The pension fund, I think, is an obvious one, that is, a contribution is made to a pension trust fund, again by all the employers who are bound by this collective agreement. You have to understand that in the construction industry, unlike other industries, each particular trade, the labourers, the asbestos workers, the plumbers, will basically have one collective agreement, a province-wide collective agreement, which will cover hundreds of employers. All those employers covered by each agreement will contribute to separate, jointly administered trust funds, and those are the trust funds we are talking about, the ones that provide the benefits for the workers.

Then (b) there is another fund which is the welfare fund. That basically provides extended health care, dental care, vision care, etc.

On page 8 (c) talks about vacation pay funds. Again, these funds were set up many years ago because of the problem in the construction industry where employers would not pay the vacation pay when it became due. Even though, under the Employment Standards Act, they were required to set it aside and make it available for the worker, many did not and therefore the worker was out of pocket the amount of the vacation pay.

There were stamps as well, but these were set up as another means by which to make sure the worker got the vacation pay when he or she wanted it. So the employers will be required to contribute into a separate trust fund—that is, vacation pay, statutory holiday fund—so many cents per hour to cover the amount of that benefit and that benefit will be paid out when it is due.

Subparagraph (d) is a training fund, and that is a relatively new benefit that we speak of here, but nevertheless a benefit the same as pension and health and welfare. What happens in the construction industry is that the employers are too small to train their own workers and cannot afford to do so, and there is also mobility of the workforce. They are here two weeks and they are gone, so it does not pay for an individual employer to spend money to train.

In order to get around that problem, what happened was that about 20 years ago we designed another employee benefit known as the training trust fund, operated on the same basis as a pension fund or a health and welfare fund. The employers would pay so many cents per hour worked into a training trust fund. The trustees of that training trust fund would provide the training necessary for the workers. Today workers are unemployed, unfortunately, in the construction industry. They will come into the training centres of these trust funds and receive upgrading training which will make them more employable, so as to avoid the necessity of layoff. So that is another benefit.

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We have supplementary unemployment benefit funds, the name of which, I think, is self-explanatory, and then there are union dues. Now, more recently, we are introducing prepaid legal services funds, which will be operated on a similar basis. These are the funds, the contributions for which we are asking protection under the wage protection

fund. They are not protected the way the act is presently defined. We feel they are as much a part of the wages as the take-home pay.

Just to give you an example, we should look—I talk about this on page 9 of the brief—at the recent federal initiative under the Bankruptcy Act, Bill C-22, with which I am sure you are familiar. They are introducing a similar worker protection fund. At the bottom of page 9 is their definition of “wages,” which includes salaries, commissions and, more important, “compensation for services rendered by an employee.”

Over the page we refer to a case in Ontario, the Canadian Display in Exhibit Company Ltd case, where the phrase “compensation for services rendered” was held by the registrar of the bankruptcy court to include the very contributions to the trust funds that we speak of. So the federal government appears to want to protect that kind of a contribution, yet Bill 70 does not.

We therefore think that after you consider all this, you will see that the contributions are really part of the overall wage package and deserve to be protected as much as, if not more than, the actual take-home pay. That is why we urge that be included in the definition of “wages.”

The next issue deals with the question of trustees of these trust funds being able to make a claim against the worker protection fund. The problem is that at the moment only the workers themselves can make those claims. The reality of the situation in the construction industry is that the contributions I just spoke of go directly to the trustees of these funds. The workers do not know until months after they are due whether or not those contributions are paid. The wages will go to the worker, and the worker will know whether the cheques are good or not. The worker will not know until about two months later whether the employer actually sent those contributions to the trustees.

Therefore, the trustees of these funds, if the contributions are paid, will want to file a construction lien. In fact the Construction Lien Act was amended some 10 years ago, as we point out at the bottom of page 11 of our brief, to give the trustees of these worker funds the right to file liens on behalf of the workers. We feel it is a far more expeditious, more pragmatic and realistic approach to let the trustees, who really represent the workers—they are trustees for the workers and therefore they are the logical persons to file the claim against the fund on behalf of the workers for those contributions. It is consistent with the Construction Lien Act, and we therefore respectfully urge that you amend this act consistent with the Construction Lien Act.

There has been some talk through our friends from the ministry of the difference between trustees of these trust funds and a trustee in bankruptcy. I think it is really an apples and oranges comparison. The reason I say that is that trustees of the employee benefit plan trust funds are trustees for the workers; the law mandates that they are trustees for the workers. This goes back to the common law. However, a trustee in bankruptcy is there as trustee for the creditors, not for the workers. That is the main difference.

When a trustee in bankruptcy pays a worker, the trustee is making a pragmatic decision because he or she wants to

keep the business enterprise going, to try to make it viable or pay back some of the debts. That person will go to the key employees and say, “We need you to continue to run this business.” The worker will say, “You want me, you’ve got to pay my arrears.” The trustee will pay the arrears, take an assignment and keep the business going. But you can see that he or she is there in an entirely different capacity than the trustee of the trust funds. We think there is a clear distinction, and really one that ought not to be of concern to the government. What they can do if they are concerned about that, in amending the act, is simply to provide that trustees of employee benefit plan trust funds can file these claims. That would clear it up very nicely.

The final point we make on the executive summary is that under this bill, construction workers, unlike any other workers, are required to file a lien before they can make a claim. That in most cases requires retaining a lawyer and requires an expense, yet the worker has to go to that expense in order to be able to file a lien. You will find that many workers simply will not have the money to go to that expense. If they are out of pocket for wages and other benefits, they simply will not have the money to file a lien. So that is a deterrent. It will not work in the construction industry; therefore they should be given some incentive to protect themselves and should be entitled to reimbursement for filing of the lien.

Similarly, where workers go to unions to file the liens, the unions should be equally entitled to some form of reimbursement for the expense they have to go to. We are not talking about big money here, but you have to understand that the construction worker, unlike his or her industrial counterpart, is at a disadvantage by having to take that extra step. We do not mind taking the extra step, but we think we should be paid some reasonable amount of money because they have to retain lawyers in most cases to do that work. Unfortunately, like any other profession these days, that costs money; hopefully not too much.

Those are the four points we have to make. We urge that you give serious consideration to them. In all other respects we compliment the government, as we say, for this legislation and hope that you will meet the needs of the construction worker by adopting these changes.

Ms S. Murdock: I actually have a number of questions. In terms of the preservation of the construction lien, right now I do not know how that works because I am not familiar with the construction lien provisions. But the trustees of the trust funds, since they stand in the stead of the workers, would not be starting the action?

Mr Koskie: The trustees of the trust funds? Yes, the trustees or the union would do so. In the case of the contributions that are payable to the trust funds, in many cases the trustees of those trust funds will file construction liens.

Ms S. Murdock: Okay. Then say it is decided and it is found that the worker is owed the money. Are the court costs covered at all in that?

Mr Koskie: A certain amount of court costs are awarded, yes, if it goes to trial. Most of these, I should point out to you, are settled before a trial. It takes a long time sometimes to settle them, but if they are settled we do

or necessarily get costs. It depends on the particular settlement. If one has to go to court and argue the case and if one is successful, one is entitled to costs, but is not necessarily reimbursed for all the legal costs incurred. It is only usually a fraction of the costs incurred.

Mr Duffy: Some of the trust plans themselves have an agreement in the trust document between management and labour that if an employer is delinquent and you have to start that action, there will be a penalty automatically assessed against the employer.

Ms S. Murdock: Okay. In terms of the number of liens that are put through, how many proportionately—speculation, I now—would be for benefits only and not wages?

Mr Koskie: Almost all of them, will be for benefits. Some of them will also be for wages. If they are for both, the majority of the claim is for the contributions to the benefit funds. The wages are, relatively speaking, a very small portion of the overall claim. As I said, the most the wage claim part will be is for two weeks' wages, because the worker simply will not work beyond the second week if he or she knows that cheques are bouncing. The contributions are payable monthly in arrears. They are payable 15 days after the month in which they were earned.

Ms S. Murdock: Darn, now the thought has just passed, has run through me, but watch, I will remember it afterwards and will kick myself for this.

In terms of the legislation, we had a presenter earlier today who asked for the same kinds of changes. My question to him, and I will ask you the same one, was, if it meant making the changes about the construction industry before this legislation was put in place, is that what you are asking for, or would you be willing for the present legislation to go through with the regulatory changes to the construction industry being made after?

Mr Koskie: The difficulty with that is that as you know, with some legislation the regulations are introduced about the same time the bill is given royal assent, but that is not always true with legislation. Quite often we find the regulations lag behind, and if they lag behind, the construction worker will benefit less from the act. So we would prefer to have that enshrined in the act now, as opposed to waiting for it to go in the regulation, unless there is some assurance that the regulation will be brought out and effective contemporaneously with the legislation itself.

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Mr Offer: Thank you for your presentation. I want to continue on the same line of questioning. Mr Moszynski was here earlier and introduced us to this matter. It was quite helpful that he had gone forward, so that when you came in later and expanded with some particularity, we were somewhat ready for the issue, so to speak.

On the construction lien—I just cannot remember—when there is the registration of the lien, I seem to recall that there is a place where you put how much is owed, and you can put down costs and things of this nature. This could include, for instance, the costs to the lien claimant for doing that. So that would all be added into the lien claim; it becomes the lien claim. It becomes \$2,000 for

work, \$15 or \$36 for registration, \$120 for lawyers. I am just wondering if that is correct. It has been a while.

Mr Koskie: Yes, I think that is correct. But those amounts, the amounts we put in there for costs, are just sort of nominal amounts really.

Mr Offer: But it is not legal fees that are put in there?

Mr Koskie: They are intended to be legal fees and registration costs and title searches and such.

Mr Offer: I just want to get that clear. The way I read it, the major issue is over this whole question of the benefits issue, and I ask ministry staff, what are "wages" under this legislation? Are they gross? Is it something else? I think that is important, because we have been talking about claiming wages against the fund, and we may be assuming something as to what wages are whereas it may be something different. For some it may be the gross amount, for others it may be the wages less income tax, and for others it may be net wages. I hope we may be able to get some clarification from ministry staff as to what the wage claim will be.

My question is, on the example you bring forward—I think you looked at the journeyman example—it had wages and vacation pay and went through all that list in appendix 2, and this was quite helpful. Would your concern be met—I do not know but I am asking—if all those other categories were added into wages?

Mr Koskie: That is what we are proposing, that the definition of "wages" include a reference to the contributions to the various employee benefit plan trust funds.

Mr Offer: I understand that, but I am saying, in the event that there was not a change to the legislation, either by legislation or by regulation, could your agreement be amended so that—maybe I am just way off.

Mr Koskie: I know what you are saying.

Mr Offer: Maybe the wages, instead of saying \$22.83 would be \$32.83, and off that would come all these things, so that the net take-home would be \$22.83, but it would in fact be \$32.83 and as such in that way the claim could be made. I do not know.

Mr Koskie: Unfortunately it cannot be, because for income tax purposes we have designed these trust funds in such a way that the employer can get a proper deduction of the contributions, but more importantly, so the worker will not be taxed on the amount of those contributions. We have to set it up as a separate contribution.

Mr Offer: So because of the income tax implications, which are obvious—

Mr Koskie: That is the reason you will see in these collective agreements. We have given you two other examples, the bricklayers and the engineers. They are all set up in the same way. They have to be structured like that for income tax purposes. Otherwise the worker is going to be taxed on those contributions.

Mr Arnott: Thank you for your very thoughtful, well-presented presentation. I would like to go back to your last recommendation in the executive summary: "The council recommends that construction workers should be compensated for any legal expenses incurred in pursuing any lien

claims." I do not have the slightest idea what a simple, typical lien costs an individual.

Mr Koskie: I knew you would ask that question. Fortunately, or unfortunately—I am not sure how you want to put it—we act for a lot of unions, as you no doubt appreciate, and we file many liens, and up to the point of actually filing the lien an average cost would be around \$750, plus disbursements. Again, that would vary, depending on the number of workers involved, because there are a lot of calculations that we have to figure, and it depends on whether we have to do title searches and things like that. But it is based on time, so a rough amount would be, we will say, no less than \$350 up to around \$750 to do all the work involved in registering the lien in the first instance.

Mr Arnott: Generally speaking, if a lien is successful, the court orders that the costs be returned?

Mr Koskie: No, but those costs are not intended to compensate the worker for all the actual legal expenses he or she has incurred. That is just the rule of the courts, so even though the worker would be entitled to some costs, it would not be 100% compensation for the costs actually incurred.

Mr Arnott: If liens were unsuccessful, and some may be frivolous, would you suggest that the individual who filed them still be compensated for legal expenses?

Mr Koskie: Yes. I think the important point is that the worker has preserved the lien, ie, registered the lien, and it is at that point that the worker should be entitled to make a claim against the fund. That would be before any determination is made of that particular claim by the court.

Mr Arnott: Many other businesses and individuals besides workers who are owed wages register liens against property. How would you respond to their claim that perhaps it is unfair that someone else gets his real costs covered for filing it?

Mr Koskie: It is the construction worker, unlike all other workers, who has to incur this additional cost to register a lien. Persons who work in a plant would be entitled to make a claim against the fund without incurring any expense. All they have to do is fill out a form, make a claim and they would be compensated up to the maximum of \$5,000. That should not cost them any money. The construction worker has to take the extra step to file a lien so that the government can in effect be subrogated to the rights of the worker in respect of that lien, and therefore the government can pursue, in the name of the worker, that lien action and in effect recover the money it paid out.

The Vice-Chair: We have about a minute and a half, Mrs Witmer, if you have anything you want to add.

Mrs Witmer: No. Actually Mr Arnott has asked the question I was concerned about.

1700

MINICOM DATA CORP

The Vice-Chair: The next presenter is Minicom Data Corp. At your leisure, whenever you are ready.

Mr Diamond: Let me tell you first why I am here. I should say, first of all, that I am not representing my company as much as I am representing myself and a whole

group of people who are like me in the province who speak to everyday.

I am here because with Bill 70 having been introduced some time ago, it became a favourite topic, or shall we say an infamous topic at a lot of gatherings, cocktail parties, tennis games, workplaces, whatever. Anyplace you were where there were people doing business in Ontario, the topic of Bill 70 came up, and the implications of what Bill 70 meant to all of us doing business in Ontario.

Since we spent so much time complaining and muttering and various other things behind the scenes, when I saw the ad in the paper I decided if I could get an appointment I should probably come down and reiterate to you some of the things that are said and thought and felt behind the scenes. I am not suggesting that none of you are aware of this because you all have constituents who talk to you, but there was a forum and I was also aware that most of the people coming to the forum were organizations and were probably in most cases, representing unions, which have one focus and in other cases representing large business groups which in some cases do not have the same focus I might have as a smaller businessman. So that is why I am here.

What I am not is an expert in the legislation. All of you, having spent the time on it, are much more expert than I am. I cannot deal with the kind of detail I have just heard for the last 10 or 15 minutes, so do not ask me any hard questions, but I can tell you about feelings, reactions and the position of the small- to medium-sized businessmen who employ in this province most or a good percentage of the people who have jobs.

What I have given out to you is a single page which provides an overview of the company and myself. I will just go through that very quickly. What we do is develop software for the real estate industry. If I had a client list, I would be one that you would recognize. I have a few names on there, under the overview—Trizec, Royal LePage, companies like that. We are into the United States as well.

We are a successful company, an Ontario company 100% Canadian owned. I said 90% Ontario owned because we do have a venture capital firm, but most of their money is out of Ontario, so I was just trying to be safe.

We have 125 employees in total; 118 of those are in Ontario. We try to be centralized in the way we operate. We have our own building that we own in Markham and about \$14 million in revenues. The source of those revenues is about half in Ontario, 40% in the rest of Canada and 10% in the US, and the US portion is becoming the fastest growing. We also have some far eastern opportunities that we will be getting into at a later date.

We spend about \$2 million annually on research and development on about 340 clients. Historically, if you go back—this is interesting because this is the kind of picture, a lot of people like to see with respect to small business. In 1977—this was before I became part of the company—two fellows got together, borrowed some money and started a company. It says there 12 employees. That is a typo. There were two employees to begin with, no revenues and no clients, and five years later there were 22 clients—still a small company—and \$600,000 in revenues. That is when I joined the company and we started to expand. By 1991—

that is today—we have 340 clients, \$14 million and 125 employees, so there is a nice growth taking place there.

What I want to point out, and it comes up later, is that our annual payroll is about \$6 million. Of that money, over 90% is being paid to people who live in Ontario and work in Ontario.

By 1995, and this is kind of the interesting one—obviously I am speculating, because maybe we will not be as successful as that or maybe we will be more successful—we will likely have many more clients than we have today, more revenues and some greater number of employees. I put a question mark in there for the number in Ontario, because frankly the kinds of things that happen over the next several years in the province are going to dictate what can afford to do in Ontario as opposed to other places where we have clients. I will get into that in a minute.

Personally I am president and CEO. I have a 30% equity stake. I do not own the whole company but a chunk of it. I have a lot of my own money in the company and a lot of my own sweat. I used to teach high school back in the early 1980s and I also have a law degree. I joined Finicom in 1982.

What is said behind the scenes and what I am about to say to you here is that it is very hard to run a business, period. I can tell you that personally. It is not an easy thing to do. I do not say it is easy to be a politician either. I think it is probably harder to be a politician because you never please everybody, but being a businessman is also very hard and there are a lot of risks associated with it, a lot of downsides. There is impact on family life. There is all sorts of bad stuff associated with being in business that is similar in many respects to the kinds of bad things that happen when you are an employee.

If I can leave you with one thing, it is to try to remember that employers are people too, especially some of the smaller employers who live and work under the same kinds of pressures that the employees of those people do.

What we have to do in Ontario, though, is that we have to run a business where we are competing with companies in other jurisdictions, and I mention some of them there. I listed four jurisdictions where we have primary competitors: Denver, Winnipeg, Seattle and Atlanta.

We have higher labour costs. I will just give you one quick example of that. I needed to hire a specialty senior person. The type of person I needed was not available in Ontario. I had to go to the US. The salary range I thought I was looking at was about \$100,000; they were making \$100,000 in the US. I found the person. We had a study done to determine how much I would have to pay that person to have an equivalent standard of living here. The answer came back between C\$150,000 to C\$160,000. If you factor in the exchange rate, there is a 35% to 40% premium that has to be paid here to give somebody the same standard of living.

The major impact on the negative side is the taxes, which are significantly greater, the changes in deductions; for example, lack of deductibility of interest on a home. The only factor in our favour is the health care, and that does not begin to deal with the other costs. When I extrapolated it back in the other direction and did some more

research, I figured out that my payroll of \$6 million, if I was operating across the border in Buffalo, would be somewhere between \$4 million and \$4.5 million to get the same kind of people and allow them to enjoy the same standard of living. The difference of \$1.5 million to \$2 million goes right to the bottom line.

The next thing I realized was that if is the case, then I have a hell of a problem because my competitors in Denver, Winnipeg, Seattle and Atlanta have a lower cost base to work with than I do, yet I have to produce the same services and I cannot charge any more than they can. I have to either be a lot better at what I do or I probably have to stick to the Ontario market only and not do a lot of expanding.

That is the kind of predicament I found myself in in 1990 and early 1991. Then what happened? The NDP got elected. The rest of the world outside of Ontario said, "Oh my," and that was something I heard from lots of people I spoke to outside. Then Premier Rae stepped up and said, "We're going to take care of business and we're going to work with people," and so on. That was greeted very favourably. Business felt a lot better. There were a lot of things in the paper about it and so on.

Then Bill 70 comes out and we get wind of some other proposed changes to the employment law, which frankly I do not have every detail on but I read some summaries on, and they are particularly scary to a small businessman like myself. Now we really get worried. When I say "we," I am talking about the people I run into, whether it be walking along Yonge or Bloor or Eglinton, or the people I associate with. I have a lot of friends and associates and friends of friends who are in business and might have anywhere from two or three employees up to a couple of hundred. Everybody is starting to think the same thing and is looking very carefully at what the government is doing, not just with Bill 70 but with everything that affects business.

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It is almost as if, because the NDP is now elected, you have to err on the side of being pro-business, because the assumption is that you are anti-business because you were elected, effectively, by union people. That is the perception out there. I am not saying all this is fact. I am only saying that is what is being said and thought.

The "we" I am talking about are typically entrepreneurs, people who start businesses, people who grow them, people who take risks in order to grow them, and people who hire other people and create jobs. By myself and a couple of partners getting going in 1982 and taking some major risks and borrowing money and putting in 18 hours a day, we were able to take a company that had eight or 10 employees, including ourselves, and build it up to over 120. That had a major positive impact for Ontario, and certainly for the people we hire.

What we are feeling now is that we are afraid of what is going to happen next. We are tired. We have just been through a serious recession. Real estate in particular has been very hard hit. That is my marketplace. It is hard to be in business during a recession. We are coming out of a recession and we are looking at all sorts of changes to employment law which are not very comfortable to think about.

We are feeling somewhat ignored. I guess I should not say that, considering that I am using a whole bunch of your time today. The process leading up to this consultative session effectively seemed to ignore—that is the perception—that business community. The fact that it came out with so many flaws and problems indicates that maybe there was not enough consultation before the fact. That the bill was effectively changed and a lot of things that were bad, from my perspective, were taken out is a good thing, but I am not convinced at this point that it is not going to show itself up in another fashion a year or two down the road. I am also not convinced that other things are not going to happen in the next couple of years that are going to be equally problematic.

These are all little facts you have to understand. I was about to lose my board of directors because all of those people were now concerned that they were going to be liable. I was also about to lose a number of officers under the proposed Bill 70. So because of that possibility, I went out and I got liability insurance. The liability insurance cost me about \$15,000. That is half an employee. That is money I would otherwise have used to hire somebody; or it may lead me to have to lay somebody off earlier than I would want to or not replace somebody leaving.

That liability insurance money is basically wasted. It took place because I had to protect the basic infrastructure at the top of my company because of the potential danger. You need to think about those things when you are making the decisions you need to make.

The result of the the whole process right now is that you have an NDP government, people are uncomfortable, some bad things happen and more bad things are talked about happening. So what happens? People like me do not want to start a business. If this is 1982, I am not going to start a business. It is too hard. The upsides are not there. The risks are too great. I am going to wait it out for a while and see what happens. So there are no new jobs happening as a result of starting businesses.

We do not want to risk capital to grow larger. Whenever we can we want to look at reducing costs because we are not sure quite what the future holds. We ignore a lot of opportunities as a result, and frankly, we look at non-Ontario opportunities. If I have 50 clients in Washington DC, maybe I am going to open up an office there and hire 25 people there instead of hiring the people in Ontario to support those clients in Washington. That is actually what happens.

There are other obvious examples of people closing plants here and moving to the US. We are not as obvious as that because we need the people we have. But in terms of expansion, why do I want to expand here when my costs are 50% higher and I have what appears to be an adversarial relationship with government, when I have other jurisdictions which are happy to have me and would love to see me hire people at lower rates?

The result of that, paradoxically, is that the people you are trying to protect end up getting hurt because they are not getting hired or they are not able to be kept around in the company or they are not getting the raises they would like to have. The overall economy of the province suffers. The real estate industry—as it happens they are my clients—

suffers because there are fewer people around working and therefore there are less people renting, and therefore they do not have the revenue coming in.

There are all these cumulative effects that go around in a circle. It is a kind of thing that does not last just a couple of years. What you do over the next couple of years with respect to your employment law and how you affect business is going to have ripple effects for well over 10 years. It is going to be very problematic.

I wrote a letter to the Premier a long while ago. Basically what I said was: I love the province; I would like to be in business here; my friends are here; I am not moving away so fast. But if you look at the impact on young people, people who are more mobile—just got married, are not married yet—what are they going to do in this kind of environment? It is already tough enough to operate here with the higher costs. Do not make it more difficult.

You should be going in the other direction. You should be looking at ways of making it easier to run a business here. All that is going to happen down the road is that we are going to end up with fewer jobs and a weaker economy. Government has to set the tone. Because it is an NDP government, you have to be even more positive to business than a Conservative or a Liberal government would. Some of you are Conservative or Liberal. I do not know who, so I am talking broadly and generally.

Okay, let me kind of close off, because I have been rambling a bit. The first thing you can do to help us and therefore, I believe, help the province is to work with us and appear to work with us, not against us. I do not feel that right now, and I would like to feel more positive about government and how government is helping. I would love to see Ontario be a place where it is easier to make a buck, not harder, so that I am encouraged and my associates and other people I know in business are encouraged to make things happen here and hire more people and grow.

Put yourself in my position. If you had \$100,000 in your hand, and you had a great idea for a business, which was not dependent on a particular jurisdiction, and you were 22 or 23 or 30 years old, would you start a business here today, or would you go to some place where your costs were lower, where your risks were a lot less? You probably heard the relative cost of severance in Ontario is two or three times higher than other provinces and many times higher than many of the States. I do not think I would start a business here, and that really worries me, because it means the province that I live in and that I want to stay in has to get weaker because fewer people are going to want to operate here.

It was suggested that I talk for 15 minutes and leave 15 minutes for any questions, so that is my talk. Any questions?

Mr Cleary: First of all, I would like to thank you for your presentation. I guess that we as politicians face some of the questions you have presented to us, that it is a bad place to do business and there are better opportunities other places and different legislation that may be coming out. I would hope that we can learn something from these hearings. I think you would feel more comfortable if there were more consultation prior to legislation being introduced. Am I correct on that?

Mr Diamond: Definitely. I would also be more comfortable if we were spending more time on doing things to help business be successful as opposed to doing things that effect are going to make business less able to be successful. That was the focus, I think. It is not totally wrong, because you need to focus on any problems that exist out there, but it seems to be very one-sided right now.

Mr Cleary: We have heard from other groups that come in here, too. They had suggested that if we would have more to consultation prior to the legislation, some of the horror stories might not even happen.

Mr Diamond: It would have been a lot better to have the bill 70 end up the way it is now—there are still a few problems with it, but it is not as damaging—than go through the enormous dislocation that took place when you released something that was inherently flawed.

Mr Cleary: I would hope that companies like yours, with the success you have had in the few short years, if you were thinking of doing things other places, in the states or somewhere, would reconsider it.

Mr Diamond: I am not here threatening that I am going to leave, because you cannot. The software company is people-related. You cannot leave. Without our people, we are nothing. All I am suggesting is that the things that make this province successful, and indirectly make my company successful—because we have in Ontario a client base—for the most part are affected by what you do. I am not here for my company as much as I am personally and for the other people whom I talk to who are in businesses that are more directly impacted.

Mr Offer: I thank you for the submission. My question is really on the last response you gave to Mr Cleary. You said the bill is now better than when it was initially introduced. Then you go on to talk about the impact this type of bill might have on companies, and you use directors as an example. Could you share with us what your reaction would be if the bill exempted the liability of directors of small businesses? You spoke about the insurance premium, that you were paying \$15,000. That is the cost of doing business. There are businesses that are much, much smaller than yours that will still have to pay, ostensibly, at the same type of premium.

Mr Diamond: Three quarters of them cannot get it at all. You have to be in reasonable financial shape to be able to do that.

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Mr Offer: And that of course raises a whole series of other problems for business. But what would your reaction be if we said the principle of the bill is the protection of wages, vacation pay for employees when the business has gone bankrupt, but directors of small business should be exempt from any personal liability.

Mr Diamond: I would jump up and down with joy, for two reasons. One is that it would solve a problem for my company personally and would allow me to have directors who are more willing to serve. Second, it would send a very strong signal that the government is aware and concerned about small business and understands what the

issues are in running a small business. Probably the second is more important than the first, because for my company personally, we solved the problem: We have insurance. But the second is much more important. There is an attitude here that I am really looking for. That would send a very strong, positive message.

Mr Offer: Thank you very much. No other questions.

Mrs Witmer: Thank you very much. I very much appreciate your comments. I would certainly concur with you that the type of information you have presented is the type of information, unfortunately, that I hear at home from people in my own community who actually are encouraging their young people, their sons and daughters, to look south of the border for opportunities if they are going to be successful. It is very frightening that some of our young people will indeed take that step. Did you have any trouble getting insurance? Did you look around? Was there much difference?

Mr Diamond: Yes, we had trouble. I think we were kind of on a borderline. You have to be a very strong company financially, especially when you are small. We are actually sort of medium-sized now: \$14 million. But if we were back in the \$5-million to \$10-million days and we were, especially during a recession, going through a period of difficulty, we would not have been able to get insurance. In fact, we applied a year earlier. We could not get insurance a year earlier. We had to have a successful year before we could get it. Most of the people I know of who are in any kind of difficulty and were worried because they might get hit with this enormous amount of liability could not get it by virtue of the fact that they were not in good shape.

Mrs Witmer: So what are they going to be doing?

Mr Diamond: They cannot do anything other than think about whether they want to stay in business. A lot of people are thinking about that now. It is a lot easier. The costs of being in business are so great in terms of risk and your time commitment and your family and all those types of things that you really wonder sometimes whether you are better off just selling out of whatever level you are at or just stop the whole thing, sell your real estate, which has a high value in Ontario, and go move somewhere else where you can buy a house for half the value, bank the rest and live on it; and I will go back to teaching. Do not think I have not thought about that. Everybody I know in business thinks about that during a recession. It is no fun being in business in a recession. Then government gets involved and makes it harder. I think they should be helping me, because they are my government. They are making it harder instead. Then you really wonder, if everybody is against me—if the economy is against me and my government is against me—then I guess maybe I am barking up the wrong tree. You know, I should not be paddling upstream against the river for ever. Take it easy. Go downstream for a while.

Mrs Witmer: I guess what I hear you saying is that if this legislation is passed as it exists and directors are made liable, there are going to be companies that are unable to buy insurance.

Mr Diamond: No, 100%.

Mrs Witmer: Obviously the only option will be to go out of business.

Mr Diamond: What will happen is that there will be some insurance. First of all, you have unwittingly improved the shareholdings of the liability insurance industry, so if any of you have any friends in that business, they are doing very well now. For those who cannot get insurance, they are going to have to look very carefully. There are all sorts of assets being switched now from husbands to wives and wives to husbands and various protections taking place. The retroactivity of the original legislation—in fact, it is still there now—was grotesque, from my perspective. It is the second time. The Family Law Reform Act was the first. I guess that was under the Liberal government, although I think it was begun by the Conservatives. So I cannot blame the NDP for introducing retroactivity into the process, but that is another problem, too.

Businessmen do not understand the validity of retroactivity because we are never retroactive. We make a deal on a going-forward basis, and we stick to it. We never go back and change the rules in arrears. That is wrong. It is improper. You just do not do that kind of thing, yet it is being done to us. It does not make you feel very good. And yet, we are under your control. Government controls us; we do not control government. In theory, we can elect the government; but in practice, I have a vote, and so what?

Mr Huget: Thank you very much for the presentation and I wish you and your company well in the future. I have some questions of principle, if you will. What do you think about the principle of the payment of workers' wages in terms of the situations we have been discussing on this bill, and bankruptcies? Should we pay those wages?

Mr Diamond: I was wondering when somebody was going to ask me that. It is very hard to argue with the principle of paying wages that are due and payable. Of course I have to say yes to that. I could also say yes to a hundred other things that are wrong with our society. People on welfare do not get enough money. Unemployment insurance is not enough for people to live on in Toronto. People go to the food banks and there is no food. I can make a list a mile long.

The question is: How do you correct that? You correct it with a Band-Aid, which is forcing people to pay up their obligations, in theory, because that is what you may believe they are, and then cause business to weaken as a result. Then the problem gets worse, the province gets worse off. Or do you try to create a situation where there is enough money around that this type of thing is not going to happen? That is one answer.

The other answer is that if it is deemed by government that this is effectively a social requirement, a social program, which is really what you are asking me, then, good, call it a social program and fund it out of the general social program revenues. But for God's sake do not add more taxes. Take it from something else. You are going to have to tighten your belts a little bit if this is more important than something else, because we are already non-competitive as it is.

You, unfortunately, have to make the decision whether this social program is more important than 15 others. I am

not going to tell you it is that important. I was not elected so I am not going to decide which one is the one you should fund. I am going to say that if you are going to fund it, do not add more taxes to fund it, because we are already taxed to death and it is hard to deal with that.

Mr Huget: The purpose of this bill is to make sure that workers who are owed money actually receive that money. It is not anti-business. In fact, it is pro-worker in the sense that people owed money should receive those money; as you, as a business, who are owed money likely demand payment from people who owe you money. I do not see it as a non-business bill. It is a protection of working people.

Mr Diamond: The corporation owes the money. If I have decided to go into business as a partnership or a sole proprietor, then I owe the money. In this case I do not owe the money, my company owes the money and I only own 30% of the company. I do not own 100%, as it happens. If my assets happen to be more easily attached, I am going to be the one who is going to be out the money even though I only own 30%. I am not even sure the idea of piercing the corporate veil and going after either shareholders or directors is a very good idea if you want to compete with the rest of the world, because it does not happen in most other jurisdictions.

Right or wrong, you have to deal with reality here. Reality says the rest of the world is operating a certain way. If Ontario is going to deviate from that in a significant way and we do not have some other assets to offer that are a lot better, which we do not any more, then we are going to lose out. You have to deal with that reality, right or wrong. Either call it a social program and fund it that way, or do not do it. If you are going to call it a social program then something else is going to suffer.

I have learned one thing in business over the last eight years, that you can cut and still survive, and I do not see any cutting going on in the Ontario government whatsoever. That is perturbing because we cannot afford to live at the level we are living.

Mr Huget: In general principle, though, if I understand you right, you would support the principle that workers should be paid the moneys they are owed?

Mr Diamond: I cannot dispute that.

Mr Huget: My final point: You mentioned you were considering looking at the environment to the south, and many businesses are considering looking to the US or somewhere else to locate their business. You cite as the reason Bill 70, which means workers need to be paid what they are owed.

Mr Diamond: I did not say that.

Mr Huget: If, in fact, someone were to go to the US as a more friendly climate, would that be so they could avoid that obligation, or am I following you? Why would the US be more attractive?

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Mr Diamond: What I said was that when you run business, the issue of starting a business, investing in business, is a function of where you can generate the greatest return. That is a fact of life, right or wrong. If you want money to flow into Ontario, you want to have a

environment as positive for business as is possible relative to other environments. If in the United States they had Bill 70, then we could have Bill 70 too. Forget about the United States—the other provinces of Canada. If everybody had the same thing, we could have it, but they do not. We were going further. Therefore, all I am saying is that the people who make decisions to put money into the province will be less likely to do so, and Bill 70 itself in its current form is not going to be a significant factor one way or the other. The attitude behind the former Bill 70 and the attitude behind a number of other things proposed for the future, related to employment legislation, is extremely damaging in terms of the way the people view the province. That is what I am saying.

I also said I am not going to move my company because I cannot, and I am speaking more broadly for lots of other people who you know and I know are thinking about it, and some are in the process of doing it now.

Mr Huget: Would I be safe in assuming you are probably not pleased with the federal initiative, then, that covers part of the same territory and involves a payroll tax?

Mr Diamond: I am not in favour of any additional taxes, I would agree with that. But the federal government at least pretending to cut costs. They are in fact cutting costs. They are taking some steps to try and do that. I am not a Conservative, I am not anything, but that is the one big difference I see between the two governments.

Mr Klopp: You mentioned attitude, and I totally agree. I had friends in university saying they were going to move to the States because we have all these taxes. That was ten years ago. I think I said, "We in the NDP government can't work on these things," and that was four years ago.

The federal government, this week again, is over budget by about \$8 billion in its projections, yet the attitude we have is that the feds are cutting. In the paper, they have cut. In fact, they are over budget again this last quarter. We are only dealing with one Bill 70 here, sir, and there are all the other issues of getting jobs in Ontario. This government is working at that and I appreciate your time come here to hear some points.

Mr Diamond: That was not a question, right?

Ms S. Murdock: No, he is renowned for this.

Mr Klopp: I want to get the last word, right?

Interjection: No, you are here to learn.

The Vice-Chair: Thank you very much for your presentation.

Mr Diamond: Thank you for your time.

RETAIL COUNCIL OF CANADA

The Vice-Chair: The next presenter is the Retail Council of Canada, Mr Woolford.

Mr Woolford: With your indulgence I have a couple prepared remarks. My submission is just being circulated now. I am sorry it did not get here sooner so that my members would have had a chance to go through it in advance.

First of all I would like to express my thanks to the committee for the chance to present the views of retailers

on Bill 70. We recognize that your committee is working on a very tight schedule and we are particularly grateful we were able to shoehorn ourselves in. I know we gave your committee staff only very short notice. They were particularly kind in making a number of adjustments to accommodate my availability. Ms Manikel has been very helpful. You should be aware that your staff are doing a good job and I am very appreciative.

I would like to open with a few remarks to introduce our organization and the retail trade generally, give you a sense of who we are and the interests we represent. The retail council is the national voice of the trade in Canada. Our members are representative of every sector of retailing and together account for about 65% of Canada's retail store volume. We count within our membership large, medium and small retailers, corporate, franchise and independent stores. While the large corporate organizations account for the major share of the total sales made by council members it is the small, medium and independent stores that constitute the great bulk of our 6,000 members. Our sister association, the Canadian Council of Grocery Distributors, counts within its membership all the major wholesale and retail food distributors. CCGD supports the views in this submission.

I would like to provide you with a bit of information about the retail trade, because it will help to highlight the relevance of Bill 70 for my members. Retailing is a very competitive business. There is easy entry into the trade and as a result the trade is marked by a large number of small firms and small chains. Unfortunately, exit from the trade is also relatively easy, with the result that we see a high turnover of firms. Companies compete very vigorously on product selection, location, service and, above all, on price.

Many of my members today face a new competitor: US retailers in the form of the cross-border shopping phenomenon. Retailing has always been a tough business to be in and succeed in, and all the signs are that this situation will continue or become even more challenging.

I would like to turn now to the substance of the legislation and then conclude with some general remarks. The council and its members support the concept that firms which owe money to their employees have a legal and moral obligation to pay that money. This was one of the strongest observations that came out when I was discussing the implications and the issues in Bill 70 with my members. I was struck by the strong sense around the table that this was a bottom line they adhered to very strongly: companies should be responsible for their debts.

Council believes the changes proposed by the Minister of Labour to the bill originally submitted represent a substantial improvement in the legislation. We are relieved that after the expression of widespread concern, the government did change a badly designed piece of legislation that would have had damaging consequences for many organizations. The proposals to exclude officers from personal liability and to limit the liability of directors remove some of the most punitive aspects of the first version of the legislation. We believe these changes reflect more closely the reality of the way business is administered today as well.

The retail council also welcomes the intention to harmonize the Ontario initiative with the proposed federal measures. I would simply note in passing that the confidence of Canadians in their governments is enhanced if those governments can arrive at those co-operative arrangements before they introduce their legislation rather than after.

Having made those opening remarks, I note there are still some facets of the legislation that are of concern to my members. The closure or bankruptcy of an enterprise often gives rise to claims on the remaining assets in the firm from a wide range of people and companies: employees, customers, lenders, suppliers, the landlord and others. We believe it would be preferable to address the interests of the parties in an integrated way rather than in a piecemeal fashion. This would help to ensure the appearance and the reality of equitable treatment of creditors and would help to reduce the possibility that unintended side effects could affect some aspects of a firm's operations.

We are very concerned that the wage protection fund will become the justification for another payroll tax. Council would be strongly opposed to such a move. We believe payroll-based levies are a seriously flawed way to raise revenues. Because such a tax would be levied without regard to the ability to pay, this tax in fact could end up increasing the number of claimants on the fund as the burden of taxation drives more firms bankrupt. The additional drain on the funds firms have for compensation would also mean that over time the tax would reduce the wages of employees.

We believe the program proposed by the government to include compensation for termination and severance pay is overly generous. Our preference would have been to limit payments to individuals' wages and vacation owing, in that these are funds taken directly from the employees' pocket. We wonder whether it is appropriate public policy to compensate individuals for the second set of items, that is, termination and severance pay. Often there are other creditors of a firm who do not have access to this kind of government subsidy. As well, we are concerned, as much of business is, about the overall level of government spending.

We note that in this connection, too, the government is contemplating additional changes to the Employment Standards Act which might have the effect of increasing the value of payments for severance pay, thereby increasing further the cost of the program to the public purse.

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I would like to finish off by making some general observations about how this legislation fits into the broader agenda of issues we see facing Ontario and Canada. Perhaps I could start with the words of Valerie Sims, who is acting executive director of the Canadian Council on Social Development. She was commenting recently on a Statscan publication reporting on the high portion of Canadians who collect unemployment insurance benefits.

She said: "The problem is that the government has had to contribute more and more just to offset the poor performance of the economy. Employment has not kept up with the formation of new households in the last 10 years."

I think her words touch a key point. The Canadian, and I would suggest the Ontario, economies have been experiencing a loss of competitiveness and as a result, Canada and Ontarians have lost job opportunities.

Governments, yours and the federal government and other provincial governments, have been under pressure to increase their contributions to individuals. This policy approach is understandable, but I would suggest misguided.

In the case of Ontario, our members are concerned that the provincial government appears to be focused more on palliating the effects of an underperforming economy than on improving performance. If Ontarians are to continue to earn a First World standard of living, the government must ensure, as a matter of priority, that the policy environment supports a healthy and competitive private sector. We are concerned that this is not the agenda of the Ontario government.

The only sure protection Ontario workers will have productive, needed jobs in firms that are vigorously competitive and highly market-responsive. In an area of cross-border shopping, this is as true for retailing as it is for an export-oriented sector.

A policy approach that focuses on public measures to compensate for the impacts of an uncompetitive economy also faces the natural restriction that governments have only a limited capacity to compensate for broad economic weakness.

Retail Council suggests that Ontario is at, if not beyond, the point where governments can add to general welfare by focusing on the needs of those affected by poor economic performance. This is especially the case if the reasons for that underperformance are structural in nature rather than cyclical.

As a final point, I would like to register our concern that it has been difficult to have meaningful consultation with the government on this issue. We were involved early on in discussions with officials and were grateful for the chance. But when we tried to bring forward and have dialogue around some creative suggestions we thought might work, we were advised the issue was already too far advanced for the government to consider other approaches.

The amount of public pressure that was required to bring about changes that were so obviously needed is also a worrisome signal about the willingness to listen. We hope this administration will show itself more open to other points of view in the future.

Those are my opening remarks. I would be happy to answer questions or discuss issues at your pleasure.

Mrs Witmer: Thank you very much for your presentation. It was very well presented. Most of the information is here.

Getting back to Bill 70, you talked about the lack of consultation. Obviously it is your wish that the government involve itself in a more complete dialogue in the future and that you have a chance to make a response. What is your feeling about the maximum amount of \$5,000, and also the ability to change that simply by regulation?

Mr Woolford: I did not get a lot of clarity from my members on the maximum threshold. From the conversation

ns I have had with officials, I think it will meet most of the needs of individuals, certainly for covering pay and vacation pay that is owing. If the government chooses to compensate employees for that, then I think the threshold could be set at a level that would be appropriate to ensure that those obligations can be met fairly.

What was the second part of the question?

Mrs Witmer: That change.

Mr Woolford: Oh, the ability to change. Frankly, I think the business of the Legislature is sufficiently full at most times that bringing something back to the Legislature is pretty demanding. I think governments need a certain measure of freedom to govern, in all honesty.

Mrs Witmer: So you would support the cabinet making that decision.

Mr Woolford: I would hope they carry out some consultations to make sure they have the amount right, that it is a burden that is supportable by the public purse and that it matches up with businesses' and employees' views of what would be fair and appropriate.

Ms S. Murdock: Just a couple of points on your comments, and actually the two of them sort of go together. I will paraphrase. You were talking about no additional tax and definitely not a payroll tax. That has been made quite clear and I thank you for the clarity of your presentation.

The next sentence was on no government spending, or that you would like governments to watch their expenditures. You cannot have it both ways.

Then your next sentence, if I recall, was—

Interjection.

Ms S. Murdock: Yes, it is on page 5.

"We are concerned about the overall level of government expenditures and would have preferred to see outlays under this program constrained by limiting the base on which payments could be made to wages and vacation pay."

I presume that is to eliminate termination and severance.

Mr Woolford: Yes.

Ms S. Murdock: Okay. I guess we are coming from two philosophically different ends, but I will try once more.

When an employee works for any employer, part of the deal they make—my base is that both the employer and the worker have a vested interest in seeing that this business works and becomes successful. It helps out at both ends so that neither is out to get the other or to damage, whichever end you are coming from. When they are working for the employer, the Employment Standards Act legislates statutory rights in terms of termination, severance and so on. This is not something new we have dredged up and thrown out and said, "Okay, now we're going to give you some additional benefits that you haven't had before." They've agreed to work for a period of time on the understanding that at the end of a certain period, should the company ever close down or whatever may happen, they are going to have the guarantee of two weeks, four weeks, six weeks, whatever. I see it as wages. I do see it as something that has been earned by the employees and is owed to them whenever the company is no longer.

I would like your views on that because I really am having great difficulty in understanding all the presentations that have been made by the employers' side that are not seeing that perspective.

Mr Woolford: Okay, I will try to answer it. I think the first and simplest point, if not necessarily the most important, is the concern about the level of expenditure the government thereby makes, the hit on the fisc, if you will.

Second, we would not advocate a rolling back of the Employment Standards Act to remove from the employer the obligation to pay severance and termination pay. We are not here to argue that aspect of the legislation should be changed. In the event of the bankruptcy of the firm, what we are suggesting is that those aspects of the capital that an employee has invested in the job not be compensated by the government. I think it is based on a feeling that government is already being relatively generous to employees, in this situation, in a way that it is not being towards any other creditor of the firm. The individual who has made a down payment on a product loses that money, and that money is as important to the customer as it is to the employee.

Ms S. Murdock: Would that customer not be able to file in the bankruptcy claim as listed? I do not know.

Mr Woolford: Cannot that employee file in the bankruptcy?

Ms S. Murdock: Where are they put?

Mr Woolford: Where is the customer put?

Ms S. Murdock: Is it at the same level?

Mr Woolford: The problem is that you always have a crocodile of people who are lined up for the assets of a firm. Naturally there is a struggle to be higher in the line. Everybody cannot be first.

Let's face it, when a firm goes down there are losses and people are going to take losses. We think that, with the way the legislation has been changed now, you have covered off the worst hit the employees take by paying back their vacation and pay owing to them. That is money out of pocket, if you will.

We suggest that trying to compensate for the capital the employee has lost probably is taking it a little too far.

1750

Ms S. Murdock: Yes, I know, but I do not think we are ever going to agree on this. Thank you very much. I appreciate it.

Mr Offer: Mr Woolford, thank you for your presentation. Just to carry on with that same line of questioning, as we have proceeded, I think we recognize there are certain entitlements employees have under ESA: obviously wages, vacation pay, termination and in some cases severance, and I hope we do not get bogged down into whether those moneys are in fact due and owing. I think we will all agree those moneys are payable to the person.

This is the question I have. What we have to ask in principle is, who should pay? On the issue of severance and termination, in a case where a company has gone bankrupt, where severance and termination are payable, where there is no employer to pay, where there is probably

no director to pay, where there is no preference on that security scale that will receive money, is it then in principle, or should it be, a debt paid by society to the worker? Are we talking about a social program or are we talking about a labour adjustment program?

We cannot change the bankruptcy legislation. We may want to, but we cannot. In the end I think we have to ask, should the taxpayers of the province owe the debt, as legitimate as it is, to the employee of a firm? If it comes out of the consolidated revenue fund, that is who it is.

Mr Woolford: As I indicated earlier, certainly with respect to severance pay and termination pay, we feel the public purse should not cover off those debts of a firm. Those are debts of the firm, no question, but we suggest that it not extend that far.

I guess we reluctantly acknowledge the validity of society picking up the debt owed for wages and vacation pay. We sincerely hope it will not happen and that firms will meet their obligations, but there are going to be circumstances where they do not. Whether or not they are within the control of the owner is beside the point, in a sense. Those are debts that probably should be paid.

There are a couple of other things, I guess. There is an extensive safety net in Canada for employees who lose their employment and are in need. As a result, I think you can argue that after we have met the immediate obligation of wages and vacation pay owing, if there is need on the part of the employee, there are other public policy instruments there to ensure that he or she is given the income needed to keep body and soul together, find another job and move back into the labour force.

We believe that going that extra step to recompense employees for the capital they have invested in the job is probably going further than is necessary, given the range of measures we have today and given the ability of governments to finance that kind of program.

Mr Offer: If I might just ask one further question. It is an area I have been exploring today. In fairness, a number of people have spoken to us on the validity of the principle. I think it is fair to say that in so far as wages and vacation pay are concerned, I cannot really recall anybody who speaks against that principle and that obligation.

They also talk about maintaining a competitiveness in the province and the concern they have that the directors' liability will impose, if not directly, certainly indirectly, a tax, be it through insurance, if available, or potentially through the loss of an expertise in a very real sense. So I ask you, in the area of small business, however we define that, what would your reaction be if the directors of small businesses were exempt from the personal liability aspects of this legislation?

Mr Woolford: As a former civil servant, I shudder at the thought of the boundary problems. When you start talking about real money, it becomes extremely difficult to define boundaries. Trying to carve out a chunk of the business community and say, "Directors of this type of company should not pay those obligations, and others should," I am not sure would be workable or terribly helpful. As well, either it is a principle or it is not. If directors are responsible, as

they are under the corporations legislation in this province then they are responsible. If they are not responsible, then take it out of corporations legislation and make it clear.

I think that trying to make exemptions for small businesses would create a lot of problems in administration, and am not sure it is worth that amount of effort to address the problem. The unfortunate reality, of course too, is that tends to be small businesses, at least in the retail trade which have the greater trouble staying in business. So you find the failures, particularly the failures where the owner has struggled against odds with that awful feeling in the pit of his or her stomach, to the point where he or she knows that the company is going down—that happens more often in the retail trade and more often in smaller firms than does in the larger firms, so that in a sense exempting small businesses then exempts that sector of the economy which is most affected by default and bankruptcy.

Mr Offer: I was probably not making myself clear. It was not that we are exempting small business. The workers' entitlement would still remain. The only thing that would be exempt would be directors of small businesses from the enforceability aspect by the branch, but the workers would not be impacted.

Mr Woolford: Let me go back to the discussion that my members had on this, all of whom were employees, none of whom was a director of a company. They felt very strongly that this was a fair obligation on the director. They were of the opinion that this was a fair obligation on the directors of the company. I was surprised by that thought that business managers would be of the view that if we could avoid an obligation we would do so, but they were not. They were quite firm on that, that this was an obligation of the company and if you were a director of that company, you understood when you signed on that you had that obligation, that there should be some commitment to the organization you are advising, to the organization you are providing leadership to. That is direct from my members, as well as the view of the Retail Council of Canada.

The Vice-Chair: Our time has basically expired here. Ms Murdock has one more question. We have two minutes on the clock. Is everyone in agreement? It is all yours.

Ms S. Murdock: This is just sort of a continuation of Mr Offer's first question. For instance, in my constituency I have a couple of small business people who have come to me who, due to the recession and the hard times right now are having difficulty paying back small business loans they got from the government. I do not know the exact name of the programs, but there have been a number of programs funded by the provincial government over the years. The Liberals and Conservatives started it a long time ago.

I am just wondering, because Mr Offer has asked this question a number of times and every time I hear it I keep thinking, "I've got to remember to ask it"—money that the provincial government funds came out of the consolidated revenue fund and went to a particular ministry to support small businesses. In both instances I am thinking of the small businesses, although their period of time for non-payment of interest and principal has now run out, and asking for extensions. Of course, given the times, I imagine

are probably going to go that route. But to me it is the same thing. It is using this money out of the consolidated revenue fund for a social or labour adjustment program, using it to hold up small businesses in hard times. I was just wondering if I could hear your comments on that.

Mr Woolford: Where the government is a creditor under a financing program, where it has acted as a lender, it should make those decisions as a prudent lender would. As a taxpayer, I hope governments would do that. That is, they would assess the company, they would try and determine if this company was going to make it, and if there was a chance of getting that money back in the future, then it is sensible to agree to an interest holiday or a suspension of payment of principle and interest over a period of time that the government and the company feel is appropriate to help the company through its troubles.

Equally, if they think the company is going down, if their judgement as a lender is that the company is in financial trouble, then fiscal prudence demands that they act to

secure their assets. I do not think government should be soft-headed about things. I do not think those decisions should be made on a social basis. You are not helping the employees by propping up a company for another six months facing the almost certain likelihood that it is going to go down in the future. In a sense, that is a deception to employees. You are giving them hope—

Ms S. Murdock: I was not thinking so much of the employees as of the owners.

Mr Woolford: You are giving a deception to the owners as well.

Ms S. Murdock: Yes, true.

The Vice-Chair: Thank you for your presentation. Time has expired. Thank you again for coming before the committee. The committee now stands adjourned until 10 o'clock tomorrow morning, at which time we will resume.

The committee adjourned at 1803.

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Standing committee on
resources development

Employment Standards
Amendment Act (Employee
Wage Protection Program), 1991

Assemblée législative
de l'Ontario

Première session, 35^e législature

Journal des débats (Hansard)

Le jeudi 1 août 1991

Comité permanent du
développement des ressources

Loi de 1991 modifiant la Loi
sur les normes d'emploi
(Programme de protection
des salaires des employés)

Clerk: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday 1 August 1991

The committee met at 1012 in committee room 2.

EMPLOYMENT STANDARDS AMENDMENT ACT (EMPLOYEE WAGE PROTECTION PROGRAM), 1991

LOI DE 1991 MODIFIANT LA LOI SUR LES NORMES D'EMPLOI (PROGRAMME DE PROTECTION DES SALAIRES DES EMPLOYÉS)

Resuming consideration of Bill 70, An Act to amend the Employment Standards Act to provide for an Employee Wage Protection Program and to make certain other amendments.

Reprise de l'étude du projet de loi 70, Loi portant modification de la Loi sur les normes d'emploi par création d'un Programme de protection des salaires des employés et par adoption de certaines autres modifications.

The Vice-Chair: I call today's meeting to order. I believe circulated this morning was a motion put forward that the committee pay the expenses of Ian Middleton, president of the student union of Lakehead University, to attend the committee.

Mr Klopp: Since we are dealing with this issue, I would like to move an amendment to add the name of Patti Parsons to this motion. She was the young lady who came yesterday morning, July 31, as a private citizen to talk about what happened when she lost her job at Granny's Chicken Coop. As she pointed out, she is not too well-off right now. Would that be okay at this time?

The Vice-Chair: Okay, there has been an amendment to the motion put on the floor. Any discussion? I need to know who is going to move the first motion.

Mr Offer: Has the first motion not been moved?

The Vice-Chair: No.

Mr Offer: Why do we not move the first motion, and when you can move an amendment to the motion?

The Vice-Chair: Ms Murdock moves that the committee pay the expenses for Ian Middleton, president of the student union of Lakehead University, to attend the committee meeting.

Mr Klopp: moves that the motion be amended by adding the name of Patti Parsons.

Mr Offer: Certainly we will be in support of the motion as amended. I think this also brings to light the point our caucus made just before the hearings commenced of the necessity to travel to meet with people across the province—not only management, not only workers, but a variety of people. We stand in support of this motion, but I think in a very real way it says that this committee should have been travelling and should have more extended hearings on a very important bill which is viewed by both business and workers across this province. We stand in support of the motion.

Motion agreed to.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Vice-Chair: Our first presenter for the day will be the Canadian Federation of Independent Business: Mr Gray and Ms Ganong. We are ready whenever you are.

Ms Ganong: Thank you very much, Mr Chair. My name is Linda Ganong. I am the director of provincial affairs for Ontario of the Canadian Federation of Independent Business. This is Brien Gray, our senior vice-president for legislative affairs.

I am not going to read our brief; I will just highlight some of the points of it. Just to tell you a little bit about our organization, we have been here on numerous occasions and seen some of you before. The CFIB is a non-partisan political action organization. We are not affiliated with any political party. We do not take any money from government or any political party.

We represent about 88,000 independent, Canadian-owned and-operated, small and medium-sized businesses across Canada. About 40,000 of them are here in Ontario. Our members come from all sectors and all industries in the province. They pretty well represent the small business universe. We have about 15% or so in manufacturing and 12% in construction. If you look at the picture of small business and look at our membership, we are pretty representative.

We also represent a variety of firm sizes. Size is not a criterion to be a member of the CFIB. Independent ownership means being privately and independently owned and operated, which means they tend to be small and medium-sized. We have very few large members. They are also a variety of ages. Our members tend to be a little older than the general Ontario population of small firms because we do not find them until they are established and have been running for a few years.

The breakdown in terms of location in the province: about a third of them are in rural areas, about a third in smaller urban centres and another third in large metropolitan centres such as Toronto. So again they are pretty representative of the entire Ontario business universe. It works out that about one out of every eight Ontario small firms is a CFIB member. Again, we are able to speak on behalf of the small firm community generally.

With regard to the plight of unpaid workers, I do not think there is one member of ours who would not agree that it is just a tragedy if workers are left unpaid if their employer goes under. It is just a question of finding what the best solution is to make sure that those people get compensated.

We have been lobbying for the past 12 to 15 years to have the federal government make changes to the Bankruptcy Act to allow unpaid workers to have a superpriority, so that they would get paid out of the assets of the bankrupt estate first, ahead of the secured creditors and ahead of the banks. Needless to say, given the strength of the

secured creditor lobby, we have not been too successful with that, but we still feel that this is the best solution, that a priority should be given to the wages of workers. It would be a fair allocation of payment out of the bankrupt company's assets and it would also mean that the cost would be borne by the people who have incurred the problem, for whatever reason, rather than by the successful companies and the other taxpayers who now have to subsidize it. So any wage protection program is basically starting from a second-best position. The best solution would be the superpriority.

Speaking about a couple of things the NDP government did right with regard to this wage protection program, the first was that it did not impose a payroll tax on the employer community to pay for it. We cannot speak highly enough about the beneficial impact that this decision is going to have on small business. It was a very sensitive policy choice, and given the development in the federal arena, it is in very stark contrast to what Ottawa has decided to do, because Ottawa has gone the other way and it is creating painful hardship for small businesses.

We have testified before as to the effect of payroll taxes on small businesses. They are much more burdensome on small businesses than large ones, because small businesses are labour-intensive. The costs of their labour are a much bigger proportion of their costs. Any tax on payroll is a tax on labour is a tax on jobs. The other thing is that payroll taxes are profit-insensitive. In times like these, recessionary times when the companies are not making money but still have to pay out on a payroll tax, it hurts a lot on the bottom line.

1020

So the government stuck to the principles that were voiced quite admirably by Mr Rae when he was opposition leader and he was faced with the employer health tax that was being imposed on the small business sector. He basically opposed that and said that a payroll tax is a tax on small business and a tax on jobs. We are really glad to see the government sticking to its principles there and not going the route of a payroll tax, and we completely support you in that.

The second action that the government took that has helped is the retreat from the original proposal to increase the liability on directors and officers. The fallout from that on the small business community would have been tremendous, and the fact that the government listened and backed off—again, we commend you for that.

That still leaves a number of outstanding problems with the bill that we want to draw to your attention today. The first one is just the overall extent of the coverage, the fact that this bill, in contrast to the federal proposals, goes beyond assisting workers whose employers have gone under through a bankruptcy or insolvency—basically a “gone out of business” situation—and also covers workers who are in still-solvent, still-operating companies who for some reason or another have missed a payroll.

Basically, in a program like this, which is sort of an extreme situation, we think that to crank up the machinery of government for any number of reasons for which a solvent operating company should miss a payroll is really

overkill and does not really accomplish the objective that this program should be accomplishing. The fact that there is a payout coming from a fund may also cause the creditors of that company to get overexcited and push the panic button. Knowing that workers have got the payout from the program may make everybody really nervous and they might put in a receiver or start pulling the plug when it is not really necessary. There could be a number of reasons why a payroll might be missed. Sometimes it is just a question of cash flow. The employees just need to hold on for another couple of weeks until a major payment comes in from a customer. So using it for solvent companies is, we think unnecessary and unwarranted and not going to really further the purposes of the bill.

There is also the extent of compensation, and there are two aspects of that. One is the ceiling itself and the other is the compensation package. We understand from officials in the Ministry of Labour that average claims are running around \$2,500 to \$3,000. That makes us question, why have a \$5,000 ceiling? If that is what the average claim is, why not set the ceiling around the nature of the average claim, \$3,000 or \$3,500? It just fits a little better with what is going on. Why start off with a \$5,000 ceiling?

Also in terms of the package itself, it is a huge step forward from the current situation, where workers basically get \$500 and that is it, to give them guaranteed coverage for their wages and vacation pay owing. Then to annex a layer of termination pay and severance pay coverage can just—given that we are running a deficit in this province and we have to really watch what we are doing, it just seems again to be unnecessary right now. What we would propose is that the legislation include a sunset provision so that the entire package could be reviewed in, say, three years. If a lower ceiling of \$3,000 to \$3,500 and a compensation package of simply wages and vacation pay are not proving to do justice, then the whole thing can be reviewed in three years and revised.

There are some problems looming on the horizon with regard to harmonizing this particular bill with the federal bill. We know that there are discussions ongoing right now at both the political and the bureaucratic levels to try to work those out. Again we just want to alert you to a couple of the areas to which attention really needs to be paid.

One is to look at how the \$5,000 Ontario ceiling, or whatever the Ontario ceiling is, and the \$2,000 proposed federal ceiling work together. We have been told by senior bureaucrats in our Ministry of Labour here that the province will not pay out an additional \$5,000 on top of the \$2,000 federal payment. The Minister of Labour confirmed that as well when he was testifying before the estimates committee. However, we heard very recently from federal officials that they are not clear this is the case. They did not understand from their discussions with the provincial officials that it was not going to be an add-on. We would like to get that cleared up. The small business community really needs absolute, unequivocal, public confirmation by the minister, at the earliest possible moment as to the fact that the programs are going to be folded in together and not cumulative. Soon, please. Let's not let this

confusion go on. It may just be because the federal officials have not understood, but whatever, it needs to be cleared up.

The other possible area for problems is meshing the two delivery mechanisms in the most cost-effective way. I know discussions are continuing and the federal government is also speaking to Manitoba and Quebec about this. It looks as though what the province is putting forward is sort of a one-stop shopping location, where all the workers would come in through the employment standards branch and then the employment standards branch would verify the claims and bill the federal government for its share. That is a very appealing concept in terms of simplicity and the fact that workers know just where to go.

The one caution we raise about it is, how much is it going to swell the payroll of the Ministry of Labour? How many more people need to be added on and is it going to be cost-effective? We understand, and we are a bit appalled at hearing, that the Ministry of Labour is contemplating adding another 131 staff to the employment standards branch for the wage protection program, and 57 of them would solely be doing this intake verification work. One of the reasons the federal government said it liked this idea was, and it was looking at Manitoba in particular, that there was a core there of already trained, experienced employment standards branch people who have been running the Manitoba program for a number of years. But if we are looking at adding on another 57 inexperienced, unknown people, there are going to be mistakes, there are going to be problems. Is it really going to be the most cost-beneficial way to do it? We want to alert you to that problem.

We are quite concerned about the fact that the bill contemplates using the regulatory authority for any subsequent increases to the program ceiling, for any additional components to the compensation package. In a bill like this, which is coming out of the consolidated general revenue, the taxpayer and the public really deserve the full accountability of the Legislature. We think that is a misuse of regulatory authority. It should be an amendment to the bill and it should be subject to full legislative debate. It would not be sneaked off through a regulation when we are talking about a substantial component of the bill.

In terms of directors' liability, we just want to reiterate that at those initial decisions that were taken on extended liability did seriously damage business confidence and trust. It sent out a signal to the business community that it was not a good one, especially considering the current economic climate. That damage is not undone right now. It is great that the government has moved back, but the damage has been done. It is really to highlight some of the dangers of trying to get things done quickly. There is a lot of pressure on the government to move quickly, and we understand that, but you are not going to hear that kind of pressure from us. We are definitely going to be advocating, "Take your time, do the work, do the research, do the consultation, get the best possible advice before you move", because it does less damage to small business confidence when governments move precipitously and send out the wrong signals.

The fact that the liability provisions have been revised is great, but there are still these new procedural changes at go along with the fact that they are now in this bill.

The fact is that collection proceedings for unpaid wages can be instituted against directors under the new provisions of this bill, under the employment standards branch, before the employer is found to be completely unable to pay, whereas under the Business Corporations Act, generally they do not move that precipitously. They do not have this new, administrative way of proceeding.

We would like to see an amendment that provides that the directors' liability would not be triggered until the debt is found to be uncollectable from the employer. Again, it will just save a lot of expense, cost, problems for directors, and remove part of the disincentive for being a director that these new onerous provisions are doing. That is what I really want to focus on right now with regard to directors' liability.

1030

It still is a disincentive to be a director because of this new burden. It is a particular problem for small firms. Small firms are often criticized for lacking management expertise. You hear it from the banks, you sometimes hear it from governments. Even the Ministry of Industry, Trade and Technology talks a lot about, "Small firms just don't have the management expertise and that's why there are problems." One of the ways they can get that management expertise is to bring outside advisers on to their boards of directors. They can bring on lawyers, accountants, other business advisers, other retired business people who have experience in their particular field, have them sit on the board and contribute to the management of the company in that way.

If you set up a program that acts as a disincentive for people, because they are worried about their own personal liability, the last place they are going to want to go is to a small firm which is, by definition, a more risky place anyway. It is a more risky, precarious enterprise by virtue of the fact that it is small, and sometimes new. The kind of disincentive directors' liability creates is going to be felt more strongly by the small firms which are most in need of that management expertise. That is part of the impact of having directors' liability. It is going to have a heavier impact on the small firms and deprive them of the management expertise they really need to make it.

The government points to, and I actually did not see this in the bill and I do not even know if it is still being considered, but initially there was talk about a three-month proclamation gap. The provisions for directors' liability would be held off. They would not be proclaimed in force for three months after the rest of the bill was proclaimed, in order that businesses could put in place directors' liability insurance. Especially from a small firm's perspective, what that does is there are a lot of assumptions going on there on the part of the government about how available and affordable directors' liability insurance really is and how sophisticated small firms are in going about getting it. We would like to blow that up, right here and now.

The first presumption seems to be that there is existing directors' liability insurance out there and it is adequate to cover this new risk. That is not clear cut, that is not black and white. Directors' liability insurance is a malpractice type of insurance and it was meant to cover "wrongful" acts. It is unclear whether the particular policy wording

that now exists in some policies would be apt to cover directors' payouts to employees or to the compensation program. It is going to take a legal review.

Companies are going to have to look at their own policies, probably with their legal counsel, and make sure the wording is apt. Some of it will be, but some of it might not be. In any case, you cannot be sure. You are going to have to undertake a review of it. That gets into that kind of expense, and also the ignorance factor of whether companies are going to be aware they are going to need to do that. Otherwise, they could think they are covered and not be. Some insurance companies have actually indicated that their traditional directors' liability insurance policy is not indeed apt to cover this new risk and that they are going to have to either revise their policies or people are going to have to get different kinds of coverage. What is out there might not be enough, as it stands.

The second presumption, that three months is enough time to put insurance coverage in place, ignores the underwriting practices for this particular kind of insurance. This is not standard, easy-assessment insurance. It really requires an individual assessment of risk. Every single company needs to be looked at individually. There are not any book rates for this. It is really based on the size of the company, the range and scope of its business and the overall financial health of the company. It takes an individual risk assessment.

There are some fairly extensive underwriting requirements. There is a detailed application form that a firm needs to fill in. It usually needs to submit copies of its bylaws, it needs to submit financial statements, sometimes a track record of financial statements for the past four or five years, and then the underwriters themselves have to look at all that material and make an assessment.

The Vice-Chair: I just want to let you know that you are about 20 minutes into it. We have allowed one half-hour.

Ms Ganong: I am sorry. I am nearly done. This is sort of the meat of it, just the tricky parts of it. Because it takes an individual assessment of risk, oftentimes the underwriting function is centralized at head office. So you are going to get a bottleneck there too, with all of the applications flowing into the most skilled underwriters. It is going to take time for them to do it. Three months just might not be enough. It is too tricky. It is not like, "Oh, here's the application. Let's just stamp it and send it on."

Also, for new companies some insurance companies may require audited financial statements. Small firms do not generally have auditors. They cannot afford them. It is not usually necessary. They are privately owned. But for this kind of insurance, the insurance companies may want audited financial statements, so then they will have to go through the whole business of getting an auditor and going through the audit and the time it takes to do that and the expense it takes to do that, just to get this insurance coverage. It could be quite a nightmare.

Once you go through all those hoops, you have to look at whether you can afford it. Can you afford the cost of the audit? Can you afford the cost of just legal counsel reviewing whatever you have, if you have anything? Can you afford the

premium? The current premium right now runs around a minimum \$2,000 a year, and that is not taking into account the extra risk. That is anybody's guess too. There is not a lot of competition in this market.

Finally, even if you can get through all that, the insurance company could turn you down. The insurance company could decide, "Too big a risk and we're not going to cover you." The companies that are most in need of coverage will be the ones that will probably be least likely to get it because they will be the ones that are brand-new, with no track record or financial statements. They may be struggling right now trying to readjust to the economy and to the structural changes that are going on and trying to see their way through, but because they are shaky, "Too big a risk." Maybe they have not made a profit yet. Those are the problematic ones and those are the ones that are creating the jobs right now. It is those brand-new, get-off-the-ground starts that are the job creators, and you could be seeing them up for a real fall.

I will leave time for questions. Our recommendations, are all listed at the back of our brief in a really easy-to-see format, so I will not bother reading them. Thank you very much for your patience. I am sorry I took so long.

The Vice-Chair: We will start the questions, Ms Murdock, with your caucus.

Ms S. Murdock: Just to allay some of your concerns, I know that when the deputy and the minister came on Monday, the negotiations with the federal government were occurring, have been going on for quite a while. In fact, we have a meeting with our federal counterparts on Wednesday of next week to continue discussions on this. Yes, it is not \$5,000 plus \$2,000. The federal side may not know it, but we will make it clear to them, I am sure.

Our hope is that we would be able to work out one-stop shopping, as you had suggested, at the provincial level and then the province would go and get the \$2,000 in bankruptcy situations or insolvency cases from the federal side and have it refunded back into the consolidated revenue fund, so that the worker or the applicant would not be out waiting for two different agencies to be making decisions. I think that answers one of your concerns.

Ms Ganong: Could the minister make that clear? Could the minister make some kind of public statement?

Ms S. Murdock: It has not been decided yet, but that is what are negotiating for and that is what we want, that there be one area of application.

Ms Ganong: And that it not be cumulative, that the provincial ceiling be the ceiling?

Ms S. Murdock: No, there will not be a double payment.

Ms Ganong: Right. That is what needs to be clarified.

Ms S. Murdock: No, that just does not make sense anyway.

Ms Ganong: We agree. It just needs to be said.

Ms S. Murdock: I know some people think we do not think, but we do.

Rather than questions, because this is extremely well done and I have to compliment you on your presentation,

with regard to the concern you expressed for workers applying to the fund—I cannot remember; it was right at the beginning of your presentation—the employment standards officer would determine whether or not wages were warranted. If it was just a case of a solvent employer who did not pay the funds but for some reason was unable to meet payroll that week, that case would not, as it does not now, be in the same situation—these are amendments to the existing Employment Standards Act. So it would work now at least if it was just that kind of case, then there would not be wages owed. There would still be that employment standards officer intervention to determine whether the case warranted going into the fund or not.

Ms Ganong: It is just that the provision for the fund does allow that if the employer is solvent but for some reason the worker has not received wages, the worker can still make a claim on the fund.

Ms S. Murdock: The worker could make the claim on the fund, but if the employment standards officer determines that it is just a matter of a minor delay or that he can get it from the employer—the primary payer is the employer, even before the fund, so you go to the employer first. That is who owes the money; that is who should be paying it.

Ms Ganong: That is great. We would just like to see that provision taken out of what is being paid out of the fund and that the fund is left to cover the cases of real hardship, the insolvencies and bankruptcies.

Mr Gray: Could I just add a point here? If you were to ask most businesses and small businesses out there whether they felt that agencies of the government were penalty imposers or rehabilitation experts, they would probably say penalty imposers. My appeal to you is that with regard to the labour standards and employment standards administration and enforcement and that kind of thing, you really impose on those people a mindset of, "We're trying to save this firm; we're trying to keep jobs; we're trying to see that wages get paid on an ongoing basis," and not focus unduly on the penalty side.

Mr Offer: I recognize there is not a great deal of time remaining, and you have covered many subjects for which there are a number of questions. Unfortunately, I have to limit to one area. We have heard concern about this whole question of directors' liability, especially in terms of its impact on small business. We all know that small business is a major creator of new jobs.

Under this bill there are enforcement procedures attached to directors of all companies. What would your reaction be if the bill were amended so that directors of small business, however that would be defined, would be exempt from the enforcement provisions of the bill? In other words, the personal liability they face now under the Business Corporations Act and the Employment Standards Act would remain basically unchanged, therefore relieving them of the necessity, for instance, of obtaining insurance, that is even possible, and all of those things.

Mr Gray: It is a novel concept. I do not think small business is saying it does not have any obligations. They

do recognize they have obligations as employers and as, if you will, trustees of the workplace. I think the issue here is that as long as the obligations and the duties are appropriate, in other words, if the obligations are appropriate to the nature of the firm, its resources, its sophistication and so on, it can cope with that.

What we are bringing to the table is that it may well be that there is not in place a regime that can handle what you are trying to achieve with this bill. What may be perfectly all right for a major corporation in terms of its obligations is simply inappropriate for a small firm. They do not have the financial or human resources or the advice to be able to respond. I cannot take an absolute position on this simply because we have not asked our members about it and we really do a democratic process.

I do not think they are asking to be totally absolved from obligation, but I think they are asking to have some sensitivity as to the differential impacts these kinds of obligations can have on different-sized firms.

Mr Offer: How would that be addressed, though?

Mr Gray: You need not necessarily go as far as we are trying to go with this legislation. You deal with the bad actors on a bad-actor-by-bad-actor basis. I think you can do it that way, rather than having to do a broad-brush and touch everybody in the economy. One of the reasons we say superpriority is a preferable route is that you touch those firms that really are the ones causing the difficulty. But when you go into broad plans—for example, at the federal level, tax everybody because they assume you are going to fail or assume you are going to mistreat your employees—to me, that is coming from the wrong premise. You have to come from the premise that this will be an exceptional thing and let's deal with the exception, rather than having a broad brush and do everybody in.

Too often we come at legislation in this country from the point of view that we have to deal with every eventuality that might happen out there, even though the vast majority of firms or people do not get caught in these situations.

Mrs Witmer: I realize we are running short of time. Actually, my question related to Mr Offer's. I have been concerned about the availability of this insurance. We have done quite a bit of investigation. In fact, we heard from a gentleman yesterday who finally got liability insurance for his company this year but could not get it last year, and he has numerous business colleagues who are unable to obtain insurance. Have you done a study of your members to determine who has this insurance, who has tried to get it and cannot? Do you have any of those data?

Ms Ganong: No, we do not have those data. We have talked to those of our members who are in the insurance brokerage industry—we have a number of them—just to get a feel of what the environment is out there, what the problems are.

One of the problems is that there are basically only about six insurance companies that do provide this to the for-profit sector, so there is not a lot of competition. Insurance companies are in the business of risk assessment, and if something looks too risky for them, they do not want to cover it. That is their business; you cannot really fault

them for that. Unfortunately, the smaller businesses are the riskier ones. They have just started up and cannot say, "Here's five years of our financial statements where we've been making a profit every year." That is very rare for a small business anyway. For the first few years they are not going to be making a profit, so they are the ones that are going to get cut in the squeeze.

Mrs Witmer: I think you have raised a very important point, and we have heard it from people. No one is going to create a business and create new jobs in this province if they cannot get the insurance.

Ms Ganong: It is going to make it more difficult for them to get directors to serve on the boards if the directors feel they cannot be covered. That is a commonsense decision. You can understand that. If indeed the extra management expertise is sometimes what makes the difference in a small business succeeding and it is deprived of that, what have we done? Have we helped our economy? It is a tragedy when workers lose their jobs, and you want to make sure they do get paid their wages, but you also want to make sure they have another job to go to.

Mrs Witmer: And I guess that is the key.

The Vice-Chair: I am going to have to cut in here. I hate to be the ogre, but that is part of my job. Thank you very much for your presentation. In particular, I found your detail on the directors' liability quite interesting. You seem to have gone into more detail than a lot of presenters. Thank you very much for that.

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CANADIAN BANKERS ASSOCIATION

The Vice-Chair: Could the Canadian Bankers Association please come forward for its presentation. Welcome to the hearings this morning.

Ms Cannon: I would like to apologize in advance. I have come down with some sort of sore throat, so I am not in my best voice today.

I am Louise Cannon. I am a senior vice-president for the Bank of Nova Scotia in the area of commercial lending, and I also serve as chairman of the CBA task force on bankruptcy reform and issues involving creditors' rights. Accompanying me today is Mr Bill Randle, who is a senior member of the CBA's legal staff. On behalf of myself, Mr Randle and the CBA, I would like to thank the committee for this opportunity to appear.

I know all of you have received the brief we wrote in May on the basis of the consultations we had with the Ministry of Labour, two of them at that time, as well as the original bill. I might add that we found those consultations to be very worth while.

Since that time, of course, we have seen the minister's announcement of June 5 that there would be significant amendments, and in the last couple of days we have seen the amendments which were tabled. While we have not had an opportunity to have a lengthy study of these amendments, we are pleased to see that a number of the issues which we raised previously in our brief appear to have been dealt with and some of our concerns have been allayed.

We had been particularly concerned with the inclusion of officers as persons liable to pay and the expanded liability-to-pay provisions imposed on directors. As creditors, banks were particularly concerned that bank officers, their agents and receivers might be construed to be officers and thus become liable to pay.

It was our firm position on the original bill that the expanded liability of officers and directors would have had a dramatically negative effect on the competitive position of the Ontario industry. Consequently, we are pleased to see that the officers' liability has been deleted; that the directors' liability has been cut back and no longer covers termination and severance pay; that the director's liability will be for unpaid wages coming due during the tenure of his directorship as opposed to one year after the fact; and that there have been a number of other technical amendments made, for example, directors being able to seek contribution from other directors for amounts for which they are found liable.

Therefore, to begin with, as an industry we can say that the provisions which most directly impacted banks adversely have been amended in a manner which resolves most of our concerns. However, there are a number of other areas where we still have broad general concerns as they impact business because, as you can appreciate, from an indirect point of view, how fare our customers, fare us.

The areas I would like to speak on now are basically federal-provincial harmonization, scope of coverage and the related issue of amendment by regulation rather than legislation, retroactivity, and then perhaps a few minor technical points at the end of my presentation. I know you have read our brief, but I would urge you to re-read our brief, because I think we do cover many areas in great depth and with clarity and it will be beneficial to the members of this committee.

Dealing first with federal-provincial harmonization, as you will know from our brief, the CBA has consistently supported the concept of protecting wages of employees. However, we have always held the firm position that the protection of employee wages should be provided by a federal program through amendments to the Bankruptcy Act, as we have always believed that the federal fund is the best means of uniformly protecting the wages of employees throughout Canada.

As we understood it, part of the rationale for Bill 7 was a perceived slowness on the part of the federal government to introduce the long-awaited federal legislation. However, the federal government has now announced Bill C-22 and made it clear that its intention is to have a wage protection plan in place by January 1, 1992. To our mind, this goes a long way to obviating the need for a provincial plan.

We are concerned that the establishment of an Ontario plan may in fact lead other provinces to establish similar but probably not identical, programs. There are some programs in place, for example, in Manitoba. Banks, as institutions with a presence in every province, are very conscious of the increased administrative costs and the burdens that are created by the absence of legislative harmony across Canada.

Therefore, we suggest that only a federal program can ensure uniformity of wage protection. Moreover, to the

extent that wage protection programs do vary from province to province, it seems to me that this will inevitably impact on the competitive position of regionally located industries, particularly those in labour-intensive sectors.

For example, we note in even the revised bill that the directors' liability is different for directors of firms incorporated in Ontario versus firms incorporated in other jurisdictions. We are concerned that Ontario and other provinces may find it difficult to attract or maintain business.

We are also very much concerned about the possibility of double-dipping by company employees if we have both provincial and federal programs. We are aware that Bill 70, section 40q, contemplates and provides for efforts to harmonize with the federal government. For that matter, Bill C-22 under paragraph 18 of the proposed Wage Claim Payment Act provides for efforts to harmonize with the provinces.

This is not to say that such harmony has actually been negotiated, thought through and is in place. There are numerous differences between Bill C-22 and Bill 70 with regard to scope of coverage, means of funding and the mechanics of payment. There is no clear guide as to which plan pays first.

We can easily see a situation where unpaid wages, in the narrow sense of wages, will be paid under the federal government proposal, and then employees will claim severance and termination under the provincial plan because these amounts are not covered under the federal plan. As a comment, because directors will not be liable for the severance and termination, the province will be in a position of paying out vast sums of money with no recourse to anybody. Our view is that the plan is going to be quite expensive for the provincial government.

I ideally we would like to see the provincial government withdraw Bill 70, but if this is not to be, we would urge the provincial government not to bring Bill 70 into force until the means of legislative harmony have really been thought through and negotiated and are clear and have been open to public scrutiny so that the problems or pitfalls can be addressed by interested parties such as creditors, receivers and small business.

Through our discussions with the federal government on Bill C-22 we are aware that there is dialogue between our two governments at this moment, but the fact is that this harmony is not yet in place, not clearly thought through, and we urge you not to introduce the bill until these matters are covered.

The next thing I would like to address is scope of coverage. Under the employee wage protection program, section 40b, wages are defined as "regular wages, overtime wages, vacation pay, holiday pay, termination pay and severance pay," and, as I will get to later, such other amounts as are prescribed. In our view, the coverage of these wages by the employee wage protection program is inappropriate, fundamentally flawed and will be unnecessarily expensive. Wage earner protection for employees, to our minds, should be restricted to regular wages, overtime wages and vacation pay. We are opposed to the proposed coverage which would cover termination pay and severance pay.

It seems to us that the fundamental rationale for any wage protection program is to give employees protection for their immediate needs, and protection of regular wages, overtime wages and vacation pay is consistent with this rationale. However, it seems to us that the inclusion of termination pay and severance pay means that the program is going to be covering amounts that are not actually earned, and it will significantly increase the size of claims on the program, particularly if you do not have this federal-provincial harmony in place as I have mentioned.

In general, termination pay, when it is paid by a solvent firm, is given in lieu of notice. It is intended to compensate the employee for the delay in finding a new job. Severance pay operates as a recognition for past service. Both severance and termination pay are payable to an employee when that employee is released by the company pursuant to a decision to terminate his services. When a company becomes insolvent, decisions go by the board. There is no deliberate decision on the part of the company to release any of its employees.

Therefore, we do not think this fundamental rationale for severance and termination pay applies in an insolvency. A number of people lose. Every stakeholder loses when a firm becomes insolvent: the shareholders will lose their capital; creditors often lose their funds which have been lent; the customers of the company may lose because contracts do not get fulfilled, and the suppliers of the company lose because trade does not get paid. It seems to us that employees are simply another stakeholder in the success of the firm, and that they should be made essentially fully immune to the effects of failure is inappropriate.

That leads me to amendment by regulation. We are opposed to a number of the provisions in Bill 70 which allow for potentially major changes in scope of coverage and liability to be effected by changes to regulation. We refer to section 40b where the definition of "wages" has a little add-on, "and such additional amounts as may be prescribed"; to section 40i, which is the amount of \$5,000 or as prescribed; and in particular to subsection 40s(3), which covers the directors' liability for wages but specifically excludes termination and severance and then says, "and such additional amounts as may be prescribed by regulation." I am not sure what is contemplated by that "as may be prescribed."

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Dealing with the first part, the definition of wages, "amounts as may be prescribed," not only allows for the definition of wages to be, pursuant to this bill, expanded upon without public scrutiny—that is a direct expansion—but we already draw your attention to the fact that, given the current definition of wages, you have an indirect possibility of expansion of coverage right now if you have changes to the Employment Standards Act. There was a bill, Bill 116, a private member's bill that was introduced. By changing one act, you expand the coverage under this one significantly. So with your definition of "amounts as may be prescribed," we feel there should not be direct enhancement of scope of coverage without public scrutiny and adequate notice, and that can only be done by legislative amendment.

With section 40s, the directors' liability, as I say, I do not know what is contemplated by this additional "as may be prescribed." In our brief, which you have, we noted the problems of getting directors to serve if the liability on them is too onerous. The last presenter I listened to was dealing with that issue at great length, so I will not expound on it too far, but if that amount "as may be prescribed" becomes some other more significant liability, I think you will be back into the same problems of getting people to serve as clearly came to the fore with the consultations on the original bill. There is some potential to impact creditors there, as there is a garnishee provision in the Wage Claim Payment Act here, section 52. If the liability on directors is significantly expanded and you have this garnishee provision, it does have an impact on creditors, which is dealt with in our brief.

Therefore, we believe any of these items should require legislative amendment and therefore the public will be afforded adequate notice to properly scrutinize and comment.

The last major area I would like to deal with is retroactivity. Under section 16 of Bill 70 it is proposed that the employee wage protection program be retroactive to October 1, 1990. As a matter of principle, the CBA has always been opposed to the use of retroactivity by any government. We see this as an abuse of the parliamentary system. In addition, if you apply the employee wage protection program retroactively, you are going to create a number of practical problems for creditors, trustees, debtors and employers. I expect if you have a submission from the Canadian Insolvency Association on the receivers, it will probably go into this in greater detail.

For any of the companies that go out of business between October 1, 1990, and the date the legislation is finally passed, it is going to create problems. For example, banks quite regularly do pay final payrolls and wages. I admit this is done often in self-interest, because you have not taken a judgement as to whether or not the business may be able to be restructured or your receiver might be able to sell it as a going concern and preserve the jobs. Therefore, the wages are paid so that these businesses will go on for a while. If you know they are going to be covered under another program retroactively, you introduce a fair amount of uncertainty into this process. Again, we oppose the retroactivity.

I think that is basically all I would say at this point in time, because most of what I have said is covered in far greater detail in our brief, which I do urge you to re-read. Bill, do you think there is anything I have missed there that you would like to address?

Mr Randle: No.

Ms Cannon: Then thank you very much for hearing us.

Mr Offer: Thank you for your presentation. It covered a number of areas. I think I would like to talk first about the directors' liability issue. I have just spoken to ministry staff to verify this. Though the bill is effective as of October 1, even in so far as wages and vacation pay are concerned, directors will not be liable until, I believe, three months after this bill is proclaimed. I do not know if that meets the concern you raised, but my understanding from the

ministry is—and I would share your concern, by the way—that there is no liability on directors under Bill 70 until three months after the bill has been proclaimed for debt incurred at that point forward. I do not know; it might be better for you if that were in the legislation, but that is my understanding. I am wondering, as a first question, whether that comes to grips with that one concern you have.

Ms Cannon: Directors no doubt will be happy to hear that, and I am sure they would appreciate having it in the legislation. But no, my concern with retroactivity is the between October 1990 and whenever the bill comes into being, time passes. There has been a poor economy. There have been a number of insolvencies, some of which are already wound up. The assets of those companies had been distributed pursuant to current legislation. If you make it retroactive, you potentially create a nightmare of unravelling past actions. That is one example of the problems that can come about, and it has nothing really to do with director pay; it has to do with just the whole distribution of the insolvent company's assets.

Similarly, as I say, if you make it retroactive, you do put a lot of people in a quandary about, "What do I do today knowing that something is going to be retroactive but it isn't in force yet?" It does create that problem of, do you make an immediate payment of wages to keep something going?

Mr Offer: I understand. I would like to put aside the federal legislation, because we have no control over it. We do not know how it is going to proceed and we do not know how it is going to be amended, so in that respect put aside the harmonization aspect, as desirable as it is. Is it your position that the wages and vacation pay of workers in bankrupt situations should be protected?

Ms Cannon: We have always held, the CBA, and we have been on public record many times as saying, that to a limit, yes, workers are vulnerable. We think they should be afforded some protection, and wages and vacation pay—when I say "wages," I mean wages for work actually done. I am not—

Mr Offer: In "wages" I am excluding termination and severance.

Ms Cannon: "Wages" in the narrow sense of wage and vacation pay, to a limit, yes, we have always felt that they should be afforded some protection. We are on record. We have always thought it should be afforded through the fund, but we have always also held very specifically that it should be at the federal level, because in the vast majority of cases unpaid wages arise out of an insolvency situation and that is a federal jurisdiction.

Mr Offer: Is it also clearly your position, bringing back the federal bill—the \$2,000 and the \$5,000—that it should not be \$7,000 but rather a total of \$5,000—

Ms Cannon: No. Our brief will state quite clearly that we think \$5,000 is excessive, and we believe the provincial program, the scope of coverage and the amount, is excessive. Our position is that ideally we would like to see the legislation in place at the federal level only. That is probably not politically feasible—I can see that—but that is why we feel this harmonization issue is so crucial.

Ms Witmer: I appreciate the thoroughness of your brief. You have raised some points that have not been made before, and I look forward to re-reading it. What comments would you make about the financing of the fund?

Ms Cannon: The fact that it is out of the province's consolidated revenue fund?

Ms Witmer: For at least the first 18 months, but after that there is certainly no guarantee.

Ms Cannon: The CBA's position has always been that funding from the consolidated revenue fund is probably the most expeditious way of doing it; otherwise you create a large bureaucracy. Because of the scope of coverage and the fact that this bill can even be indirectly increased by changes to other bills, we believe this is going to be very expensive to the province.

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Mr Wood: I notice in your brief you suggested that Bill 70 be withdrawn and that we wait for federal legislation to be brought in. I do not know if you are aware that over the last 24 or 25 years we have had four different prime ministers—Trudeau, Clark, Turner and Mulroney—who have brought in legislation six times. This is the seventh time; previous bills were left to die on the order paper. I am wondering if, in your opinion, the new government that has been in office for about 10 months should depend on the federal government to protect the workers of Ontario.

Ms Cannon: In answer to your question, "Am I aware?"—yes, I am fairly well versed in bankruptcy matters because of my work with the CBA. The fact of the matter is that Bill C-22 is out now. It very clearly states that it is the intent to have it in place by January 1, certainly the wage protection plan part of it. To the best of my knowledge, there has been no major opposition to the wage aspects of that bill.

Mr Randle: And the way it is structured, it would also be possible for the federal government to detach the wage protection program from the other amendments. We are not aware of any group that has opposed the principle, and any opposition to some of the details has not been overwhelmingly significant. So, to answer your question, we are aware that there have been no real major amendments to the Bankruptcy Act at the federal level since 1949, but there have been numerous attempts.

I think it is significant that this time they tried to make a limited number of amendments to the Bankruptcy Act. They have had substantial consultation with a wide range of groups, including ourselves for a number of years, and they certainly feel they have a consensus on most of the major issues.

There is obviously going to be opposition from different groups to different parts of it, but it is probably further along than any of the previous bills in terms of its prospect of passage. The minister seemed very determined to get it passed, and the cabinet seems to wish to get it passed. I think this is an important change from previous attempts, but the most important for this particular bill is that the wage program is not part—technically it is to some extent, but as a practical matter it is not—of the bankruptcy

amendments per se. It would be very easy simply to deal with that as a separate issue and pass it, without having to pass the Bankruptcy Act amendments in other areas, if they were to present any problem.

Mr Wood: The point I wanted to make is that we are getting into the third year of the federal government. Next year is in all likelihood an election year, and it has happened on previous occasions that the bill was left to die. I just wanted to raise that point.

I wanted to hear your opinion on the liability of directors under the Corporations Act. The liability of business corporations is substantially different than that of non-profit organizations or companies. This is the proposal that we have brought forward. I am just wondering if you had any comments on that.

Ms Cannon: As we pointed out in our briefs, if you were to have a substantial directors' liability for charitable and non-profit organizations, I do not know how you would ever get anybody to serve on their boards.

Mr Randle: I myself have served on the boards of charitable, non-profit organizations for free. If this legislation had been passed then, I would have resigned the next day.

Ms Cannon: I also serve on a number of volunteer boards, and I would not carry on.

Mr Wood: We are all aware of the hardship in the community when a number of employees lose their jobs and all means of income as a result of bankruptcy or receivership. Is it the feeling of your group that these people should be compensated, rather than the community having to pick up the burden?

Ms Cannon: I am not sure I understand.

Mr Wood: There is a real hardship on the municipality when people are thrown out of work as a result of bankruptcy and receivership and do not get the wages they are owed, whether it is for a month or two months or whether it is vacation pay. The trauma shown in the examples that have been brought forward to us in the last two and a half days is just unbelievable.

Ms Cannon: We have always gone on public record as being in favour of some protection for unpaid wages, with a cap, to be paid from a special fund.

The Vice-Chair: I have to cut you short because we have exhausted our time. I thank you very much for your presentation. It is a different point of view coming from the banking industry and we have not heard it before, so I thank you for that. It really helps us round out our deliberations.

Ms Cannon: Thank you very much for your time.

SOLARCHEM ENVIRONMENTAL SYSTEMS

The Vice-Chair: Our next presenters will be Solarchem Environmental Systems.

Mr D. Lorrimer: Could I ask an administrative question? It was unclear to us whether we had a 15-minute slot or a half-hour slot.

The Vice-Chair: A 15-minute slot has been scheduled.

Mr D. Lorrimer: That is fine. I would like to introduce myself. I am Doug Lorrimer. I am chairman of Solarchem Environmental Systems. Beside me—and the

relationship is a little hard to hide—is my brother Scott, and he is president of Brolor Investments Ltd, our prime investor in the company.

I would like to thank the committee for inviting us to make this presentation. I am sorry we did not submit a brief beforehand, but it was less than two weeks ago that we received the invitation. I am sure you can appreciate that those of us in small business have many demands on our 26-hour days and we did not have time to prepare written material, although I know some of you around the table will have been recipients of a letter we sent to Mr Rae outlining some of our concerns.

Who are we? Solarchem is a small new business dedicated to the design, manufacturing and selling of environmental remediation equipment. We were founded in 1984. We are 100% Canadian owned. Over 80% of our investors are based in Ontario. We had an investment of more than \$4 million in the company and more than 60% of this was spent in research and development, developing our product from scratch. We have developed what we and others consider to be world-class technology in environmental remediation.

We have attracted interest in this technology in the United States, Europe and Australia. Our sales are increasing by more than 100% a year. Greater than 70% of our 1991 sales will be exported to the US. We have a US office now in the southwest part of the states to facilitate our marketing there. Some of our key customers include Domtar, Mobil Oil Corp, Uniroyal Chemical, ICI—formerly CIL—and Nestle.

We employ 40 people in this province. We consider our employee relations are good, and we have a plan set up so that our employees will benefit in our company's success.

We have been very fortunate in attracting a board of directors that includes people versed in accounting. We have two retired CEOs of similar organizations, two people with MBA credentials, two current CEOs of similar organizations, and a PhD in the science that we are involved in.

To date, none of our directors has received any remuneration for service provided and none of our investors has received any return on investment. We are currently trying to raise new equity to expand our business. As part of this process, we have canvassed our existing investors and at least one of them has said, yes, they are interested in investing but not in Ontario. That is not a political statement on my part. That is what we are up against.

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Why are we here? The list of witnesses we had seen for this committee included many organizations, and we agree with a lot of the points they are making, but we did not see too many small businesses represented. We feel the point should be made since we are the ones that are actually in the trenches.

We appreciate the reasons behind the proposed Bill 70 and we sympathize with a lot of the undeserved hardship that falls upon employees when they are out of work, but thinking about the welfare of workers at an unfair cost to those responsible for the startup and financial support of companies is more damaging to the workers' interest in the long run. Although the short-term gains for workers may look attractive, I think the long-term implications could be devastating.

Solarchem is unique in Canada because of the unfavourable environment for risk investment, but it should not be unique. In fact, if you read many of the economists papers, we should be a model company. This is the kind of company Canada seems to want. We are expanding. We are exporting technology. We have developed a world-class technology through our own internal R&D and we have created new jobs. Those seem to be all the buzzwords these days.

In terms of our comments on the bill specifically, we do not know where it stands. The last presenter said, "The amendments have now been tabled." When we last heard they had not been tabled, so we did not know how they read and it was difficult to provide detailed inputs. We do not have the resources to monitor the actions of Queen's Park on a daily and hourly basis.

We would like to address some fundamental concerns that underlie the bill. In spite of the remarks made by the minister, it is hard for us to believe that there was any consultation with the business community prior to the introduction of Bill 70 or, if there was, it was totally ignored. We feel there is a great lack of understanding among those who drafted and supported the bill of how small business works and grows in this province. We certainly find unacceptable and offensive the implied selfishness and dishonesty on the part of boards of directors and officers that seem to be contained in the bill.

Blaming investors, directors and officers solely for the failure of any company is an unacceptable and unfair basis for any legislation. There are many things that make a company fail, many of them out of the control of anybody who is in charge of the company. Under the bill, as we see it, even if the directors do a responsible job, the liability is still there and there is little defence or recourse.

We are concerned about the alarming signals that underlie this bill and what they could become in other bills. The thinking just scares us, so we thought we had better outline what risk we take in starting a new company in Ontario. Canada and Ontario need entrepreneurial development of technology, not discouragement.

Business uncertainties are already substantial even for profitably operating businesses; we do not need additional barriers from government. It is hard enough to attract investment for any company in Canada these days and especially difficult for those of us in a new technology field taking technology from laboratory to market.

We understand that governments want to be progressive, but if they become too progressive and get us too far ahead of competitive countries then the business risk increases immensely. I will just outline some of our personal and company risks. They include the odds of survival from startup of any small business, and the ultimate successes are remote. Just look at the record.

Will our technology work? We do not know until we have tried it and marketed it. Can it be adapted to commercial use? Again, we do not know; we have to find out.

We are a small company. We have new technology. That raises great barriers when we market to large corporations. They do not like either of those features. We have to overcome that problem. We have to plan and hire

in anticipation of orders because we cannot wait until they come in to get our staff up to speed.

Forecasting is difficult at the best of times and under recessionary conditions it is even more difficult and practically impossible. Our company and others must be competitive, not only domestically but on an international scale, not because we market internationally but because we are up against competitors coming into this country and this province.

On top of that and on top of the investment we have put into the company, many of us must make personal guarantees for leases and loans that the company assumes. In Bill 70, there is an apparent assumption that the natural result of risk is reward. Clearly this is a desirable result, but it is certainly not a natural result. If our company fails, we as investors and directors stand to lose a great deal along with the employees.

Now the odds to improve our chances of success are being able to attract a good board of directors and good officers. We need to depend on this good board of directors, both for the protection of the investors and ultimately for the protection of the employees, because it is their good advice and good service that will keep the company alive and thriving. We cannot afford to purchase this type of advice through consultants and others.

Where Bill 70 comes into play is that we are asking these directors to assume an unknown magnitude of liability. We are asking them to assume retroactivity. In other words, they have to accept responsibility for things they no longer can change, and there is a carry-forward responsibility for things they cannot predict in the future.

What are the likely consequences for Solarchem? First of all, a number of our good directors will resign. We have been put on notice to that effect and that will be a major blow to the company.

The options, then, for the company: One would be to close up shop. That is rather drastic, but we may have to do that if we lose all the advice and we lose our confidence. Two would be to find insurance to cover this. First, only insurance companies win in that kind of game, and second, right now we cannot even afford directors' liability insurance, let alone additional insurance to cover these eventualities.

The only other option then would be to move our company to a more favourable business environment. Now we are located in Ontario because it was natural for us. We are Ontario people. We believe in Canada. We believe in Ontario. We thought we could make world-class technology in this province and make it work. However, moving is now an item on the agenda at our board meetings. We do not want to move. It is expensive. It would cause a lot of disruption. But we are being both pulled, because our major markets are elsewhere, and we are being pushed by certain things that are happening in Canada.

It would be wrong to suggest that Bill 70 alone would be the single reason that would make us move, but it might be one of the last straws. We must encourage initiative at all levels, not just for employees and managers of companies, but investors as well. There are a number of programs that have been introduced by the provincial government that pretend to help small businesses and research and development.

However, if we bring in legislation such as Bill 70, that is working at countermeasures. It is not encouraging the development of the company itself and investment in it.

We must have an environment where companies like ours can grow and flourish, and we do not believe the basis behind Bill 70 is the kind of environment that will create that.

That is the end of our formal presentation. We would entertain questions.

The Vice-Chair: Due to time, because we will overrun the time, I will allow one question from each caucus, and we will start with Miss Witmer.

Mrs Witmer: I very much appreciate hearing how this personally is going to impact on you and you are certainly echoing the comments made by many other business people. They, unfortunately, seriously have to consider moving south of the border in order to make a go of it. What particular aspect of the bill are you most concerned about?

Mr D. Lorrimer: I will not comment on particular aspects of the bill because as I said, we did not have time to study it to the degree that we could answer those types of questions. It is the underlying fundamentals that concern us most, not just with this bill, but things that could come downstream. If we accept this, then it could get worse.

Mrs Witmer: So you are looking ahead to the other bills that are being proposed.

Mr D. Lorrimer: That could conceivably be proposed.

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Mr Owens: One of the things that concerns me about your comments and the comments of other presenters is that the wage protection plan is designed as the last step along the road and is designed for workers whose companies are unable to pay for whatever reason. I cannot see how that is a disincentive to invest. The other market problems you have described I think are far more of a disadvantage, along with federal tax issues and interest rate policies and high dollar policies, than the wage protection policy would be when it is implemented.

Mr D. Lorrimer: That could require a long answer, which I will not give, but I think a great disincentive to investment is for an investor to see no or a very inactive board of directors. If we cannot have a good board of directors we are not going to attract good investment.

Mr Owens: If we can arrange to get the amendments, I think you will find them instructive.

Mr D. Lorrimer: I do not believe so.

The Vice-Chair: I have to got to interject here. I am sorry, but I said one and I am going to hold everyone to it.

Mr Offer: Thank you very much for sharing if not the particulars of the bill, at least some of the feelings behind the presentation which are important. I guess I would like to carry on with that and ask you a very simple question. I know there are all these other things that are also in the offing. If it is not changes to the Labour Relations Act, it is discussion around the Employment Standards Act as well as this. You are a small business person, and as you said you fall within all the buzz words. What is the message you are hearing?

Mr D. Lorriman: From government?

Mr Offer: Yes.

Mr D. Lorriman: I am talking from an investor-director perspective now. It is that it is creating an environment in which if we meet and live within that environment, we are likely to be uncompetitive and the company will not survive.

The Vice-Chair: Once again I think you have reaffirmed some of the concerns that have been brought to us by the small business people who have come in on an individual basis. There have been a couple, and you reaffirmed their concerns and I thank you for that.

Mr D. Lorriman: Could I just make a final point, not related to this but in terms of the way your committee operates? We are from out of town. We had to come into Toronto today and in doing our research to develop our presentation we were not able to get a copy of the Employment Standards Act. The only way we could get it was to go down to the government bookstore on Bay Street and pick it up. Being from out of town, we just cannot do that, so the government information process does not make it easy for people to input into your committee without that information being freely and easily available.

The Vice-Chair: I thank you for that and I know they can be ordered, but in the past—

Mr D. Lorriman: Not in two weeks.

The Vice-Chair: In two weeks it is difficult.

Mr S. Lorriman: They are out of print.

The Vice-Chair: I ran into that out-of-print scenario myself in the past and I thank you for your suggestion we look at that.

LABOUR COUNCIL OF METROPOLITAN TORONTO AND YORK REGION

The Vice-Chair: The next presenter is the Labour Council of Metropolitan Toronto and York Region. Perhaps you could come forward and introduce yourself for the sake of Hansard.

Mr Clancy: We want to thank you for the opportunity of being able to come and make representations to a government we have confidence in. My name is Pat Clancy and I am the vice-president of the Labour Council of Metropolitan Toronto and York Region. With me is Brenda Wall, who is the executive assistant to the president of the Labour Council of Metropolitan Toronto and York Region, and Janet Dassinger, who is the assistant executive director of our Metro Labour Education and Skills Training Centre. I am going to ask Ms Dassinger if she will read our brief.

Ms Dassinger: The Labour Council of Metro Toronto and York Region is pleased to have an opportunity to appear before your committee to discuss the employee wage protection program. The Labour Council of Metro Toronto and York Region represents approximately 180,000 members in over 400 affiliated local unions. Since September 1987, the labour council has sponsored a worker's education centre that provides education and assistance programs to both employed and unemployed union members. In September 1987, the labour council, through the Metro Labour Education

Centre, initiated a service specifically targeted at assisting union members who experienced job loss through workplace closings and layoffs. Since that time, the skills training program for unemployed workers has assisted over 2,000 workers who have lost their jobs. Many of those workers have been doubly victimized by employer bankruptcies and insolvencies.

Experience with bankruptcies came early in the life of the centre. In March 1988, several months after the skills program began, workers from two bankruptcies came to us for assistance. Marshall Industries, which was organized by the United Steelworkers of America, closed for the second time due to bankruptcy, this time permanently. At the same time, Transport Route Canada was declared insolvent, throwing thousands of workers across the country out of work, represented by the Canadian Brotherhood of Railway Workers. Only months before, that company had been privatized with the consent of the federal government.

In a letter written to the Prime Minister, a worker from Transport Route Canada wrote bitterly at that time: "After 33 years of faithful service to the company, I wound up on the street without any security at all; no separation pay, no severance pay, no pension, only partial holiday pay.... I hope to repay you in some small way for your kindness—perhaps at the ballot box in the next election. God save us from you and your government's kindness."

As Transport Route Canada and Marshall Industries workers struggled to put their lives back together, they were studying math and English at the centre. One of their classroom exercises involved calculating the money that was owed to them. Collectively six workers had 185 years of service and were owed over \$60,000 in vacation pay, severance pay and pension money. Not one of them was entitled to less than \$8,000.

Over the past four years many more bankruptcies have occurred in Metro Toronto. The garment industry is particularly vulnerable. Immigrant women are frequently thrown out of work from the garment and textile industry with out any notice at all, often arriving at the company to find the doors locked and the machinery gone. Companies like the Sigal Shirt Co Ltd and Russill Morrin were early closures. More recently, Fine Art and Arrow Uniform have closed.

There is no question that the economic picture in Metro Toronto is a reflection of what is going on in the province, as a whole. As the Ontario Federation of Labour has documented, job loss in the province has totalled 214,000 during the recession, with the most severe losses occurring in manufacturing. As well, these job losses, unlike those of the recession in 1981 and 1982, are permanent. Bankruptcies have increased by 73% in 1990.

In March 1991 the unemployment rate in greater Toronto reached 10.1%. Job losses due to layoffs, partial closures and closures increased from 4,965 in 1989 to 27,317 in 1990, which is a phenomenal increase. Between January and March of this year another 19,289 jobs were lost. Clearly the haemorrhaging of manufacturing is much more than a temporary phenomenon, and economic recovery will therefore take much longer. From our own records at the labour education centre we can attest to the displacement

of 21,819 unionized workers from over 110 plant closings when we opened our doors in 1987.

I would like to describe to you a picture of the laid-off worker we have assisted at MLEC, because we really want to see this issue put into human terms as well as economic ones. The level of demand for services and assistance among the unemployed has matched the intensification of job loss, as demonstrated in the statistical summary you will find at the back of this brief. While workers have expressed many needs in the area of assistance, the following have been consistent:

Of course the very first one is always income support. There is no more compelling argument for a generous wage protection fund than the overwhelming and immediate need among laid-off workers to have their income maintained. Many workers who are affected by bankruptcies come from low-paying, labour-intensive industries like garment and textile. They have little, if any, personal savings in many cases. When wages are abruptly cut off, workers risk being thrown into immediate poverty. In order to successfully adjust to job loss, workers have to be able to meet their basic needs for shelter and food. A wage protection fund would provide for these immediate needs until more stable income support was available.

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As well, workers need information about basic skills and job training programs. They accurately perceive that manufacturing jobs are disappearing and they express an interest in training, but for the majority of laid-off workers, information about available programs is difficult to find and understand. For workers whose first language is not English, the problem is magnified a hundredfold.

Workers need access to adjustment programs and training. Those who are fortunate enough to find accurate and up-to-date information about adjustment programs, such as the program for older worker adjustment, which the province participates in, and the Transitions program for older workers, are likely to find access severely restricted. Rigid criteria in the vast majority of programs make it very difficult for workers to get into them. This is even more true for immigrant workers, who also face systemic racism, sexism and agism when attempting to access programs and services.

The typical worker at MLEC, if you were to look at a snapshot, would basically be described in this way: Many laid-off workers are age 45 and over. Well over 60% of the workers we see at MLEC are in that age group. Their plight has been well documented. Older workers experience longer periods of unemployment, and in fact there is a survey at the back which will show you that when we surveyed a group of workers who had been affected by job loss, the group that was still 75% unemployed was over 45. Clearly, it is the older worker who is affected most seriously.

Immigrant workers and visible minority workers are the majority of those affected in the workplace closings that MLEC deals with. This holds true in both higher-paying, capital-intensive industries such as steel, auto and rubber and the lower-paying, more labour-intensive sectors like garment and textile. Immigrant and visible minority workers face greater systemic barriers to re-employment and

retraining and are often disadvantaged by their need for literacy and language training.

Finally, workers displaced from manufacturing have few transferable skills. They have often worked in unskilled and semiskilled jobs, with little opportunity to upgrade or learn new skills. This means that accessing meaningful re-employment is very difficult. Similarly, job training is difficult because they have lacked the opportunity to learn generic and portable skills.

The vast majority of workers laid off that MLEC assists are displaced from manufacturing and have had little opportunity to gain transferable skills. Consequently, they risk being trapped in low-wage, low-skill employment. For those who need to improve basic skills in order to find new employment or enter training, there are even more serious barriers.

Income support is a key element in successful adjustment to job loss. For workers to access information and then programs and services, income support is a critical first step. Without being able to meet basic needs for shelter and food, workers cannot properly decide on the training and employment options available to them. Income support must be viewed as a right for the unemployed, not a privilege. Without adequate income support, it is not possible for workers who are displaced to have choices.

A wage protection fund should assist workers least likely to have access to information and services: workers displaced suddenly through bankruptcies, and specifically those workers displaced from low-paying, labour-intensive industries like garment and textile. Through our experience, it is very evident that workers in these industries rarely benefit from the usual adjustment mechanisms such as workplace adjustment committees. There is no reason why a worker who has been displaced from a job ghetto should have any less access to government programs and training than one who has lost a job in a large company and will likely receive a generous severance package. Ensuring that workers who are victimized by bankruptcies, particularly in job ghettos, have access to wage compensation is an issue of equity, not a privilege.

Access to such a fund must be swift and non-bureaucratic. Workers who do not speak English in particular face great barriers in accessing written and verbal information about programs. Workers must have access to information about the wage protection fund through their union, through community agencies which serve them and through government adjustment programs. As well, there should be a great effort to expedite access to money so that workers can begin to make significant decisions concerning employment and training options.

We submit that the level of compensation available must be generous. As we noted above, long-term workers particularly, who constitute the majority age group at MLEC, often have huge sums owed to them. While the current sum of \$5,000 is a good minimum, we strongly feel that a greater amount should be available to more properly compensate long-term employees. Specifically, we feel that the program must be indexed to the CPI in order to protect the purchasing power of recipients.

Finally, we propose that the program be funded not from general tax revenues, as currently proposed, but by a payroll tax so that the employer bears some of this responsibility. Our estimates would place such a tax at approximately one tenth of 1%, and this level, we submit, would neither be onerous for employers nor adversely affect Ontario's economic recovery.

In conclusion, we congratulate the government for having introduced this long-needed program. While it does not represent a fulfilment of all the objectives we have outlined in this and previous briefs to the government on the issue, it will serve the working people of this province well.

The Vice-Chair: We only have about four minutes, so I will start this time with Mr Owens.

Mr Owens: I would like to thank the folks from the MLEC for presenting today. I know from personal experience with the organization that you folks do extremely good work and have been of great service to many workers in this city.

I am concerned about your recommendation with respect to funding the plan with an employer tax. It seems that one of the difficulties we have encountered around the economic situation is tax problems, and putting another tax on employers I do not think is the best way to go.

A supplementary question around fixing the funds to the CPI: Would you then be in favour of a sunset review, say a three-year review period where the government could review where figures are with respect to CPI, or would you just want to see that on a floating basis to be fixed periodically throughout the year?

Mr Clancy: I think that really the indexing, which we will deal with first, does not necessarily have to be the CPI, but it has to be some kind of indexing that is going to guarantee that with the increased cost of living, the wages workers are going to be paid are going to be maintained. The \$5,000 today, in three years or two years or five years in this economy, can be very—

Mr Owens: Presumably workers are going to make advances as well.

Mr Clancy: That is right. I noted that the federal government is talking about \$2,000. With great respect to that \$2,000, I can remember when we were making representations to the federal government from the union I worked for and \$2,000 was the amount at that time, and that is somewhat longer than five years, six years ago that those were the numbers. They really have not grown in their concerns about protection of workers' wages.

As far as how the money is collected is concerned, I think that fundamentally, the way we see it, it is a responsibility of corporations to be able to provide security to their workers with regard to the wages they have at least earned, the benefits they have earned—not necessarily that it is going to be some kind of gift to them, but the things they have earned, either because of the legislation or because of the fact they are working for wages and benefits and they are the things that they are entitled to get.

Those corporations should be responsible to provide that kind of protection. It should not just go back to the general taxpayer to have to provide that protection. It is

really another part of the cost of doing business in this province. We think it is part of doing business and the cost of that is really not extremely costly to the corporations. We think it is their responsibility. There is no real need to downshift it, as they have been doing for years, downshifting that responsibility to the general public.

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The Vice-Chair: I made a slight error on time, so if you have a very quick one.

Mr Owens: I guess another proposal that has come up is with respect to making the worker a super-secure creditor in a bankruptcy proceeding. How do you view that?

Mr Clancy: The thing about workers is that workers do not go out to go to work and risk their investment. What is their investment? Their investment is their labour. They do not go out to risk that investment. They go out there to make that contribution of their labour and they expect to be paid for that contribution of their labour. If there is a successful business, the successful business is still going to make that money. If the business is not successful, the people who went into that business went in there taking a risk.

I have a problem where we say that workers should have to get placed behind all the risk-takers. I think the worker should be in front of all the risk-takers, the banks, the investment corporations and all of these people, plants, corporations. I think all of them should be secondary to the worker, and I do not really care what order they necessarily come in, but I do think workers have an entitlement, a positive entitlement, in fact a right, to be the first to get their wages and what they have already sold their labour for, because if they do not get that, then they very seldom ever make a recovery.

Mr Owens: I guess as a comment—

The Vice-Chair: I am sorry. I have to cut you off there. You have exhausted it. Mr Offer.

Mr Offer: I would like to carry on with that previous line of questioning. I imagine if it were possible that we in this Legislature could determine the priorities under a bankruptcy or whatever, this piece of legislation might not be necessary. Unfortunately, we do not have that ability, as it is federal legislation.

Actually, I do not know that anybody really has disagreed with this, no matter where they come from on this spectrum. I think there is a general recognition, for instance, and I will use a bankruptcy, that a particular employee will be entitled to wages, vacation pay, termination and potentially severance pay. The question that always follows from that is, given that this can be quantified, who should pay? That is what we are left with. In your submission, I think you are saying that dealing with the limit, it should not be the general taxpayer but rather the business community specifically.

I have two questions, and that would be the first one. Is that your position? That is what is really here in the legislation now, that in general it is the taxpayer who is going to fund this particular matter and it is not going to be the business community. Is it your position that should be reversed?

Mr Clancy: I think very clearly our position is as I announced it, that we feel the responsibility to pay those debts is the employer's responsibility. We can understand why the government is proposing legislation that has broadened it to the general taxpayer, I guess because they do not want it to look like a disincentive to people to be employers.

My problem with that is that bankruptcies are one thing, but bankruptcies are not necessarily always things that cannot be avoided. In many occasions, bankruptcies can be avoided. Plant closures are things that can quite often be avoided. Many times those kinds of plant closures are to take a plant from one place to another community or even to another country because the ability to make more profits is there. Why should the general taxpayer have to pay that? It would be our opinion that it is a business decision, and because it is a business decision, the business community should have to pay that.

We find that in most cases the closures that happen could quite possibly be avoided if there was any incentive on the part of the business community to change those things. We have gone through all kinds of plant closures in Ontario and in the greater Toronto area in the last year and a half or so, and quite a few of those closures could have been prevented if the people who were involved in directing those corporations wanted to do business in this country. They did not have to leave to go to another community or anything else, except that they were in it for one motivation, profit. The workers are not in it for profit; they are in it for guarantees. If they are in it for the profit motivation, we feel they should be the ones who are paying the cost, not the general taxpayer.

Mr Offer: You bring forward an important point. I do not want to put words in your mouth, but it seems you are saying that the vast majority of business owners in this province are good people who want to make a success, but in your case I think you are saying there are some who are not as good as others. I do not know whether that is what you are saying. If it is, I would like to hear that. Is it then right that the good business operators, people who have been in business, who employ a lot of people, who expand and continue to expand should, through a payroll tax, in many ways subsidize those who are less good? Is there some inequity in that case?

Ms Wall: I would like to say that I do not like this combination of good employers versus bad employers. Essentially, employers are in it for the profits they make, and yes, in most cases the ones who are doing things on behalf of the workers or setting up good collective agreements have been negotiated by the strong unions in this province. It is a misnomer to say good employers versus bad employers. Within that system we have, yes, it is to stop a kind of superexploitation of workers.

In this city we have had several examples of garment industries, for example Lark Manufacturing, closing down one day, opening up as another company the next day and then laying the same workers off and opening up down the street. That kind of superexploitation of workers has got to be stopped. In the end the workers themselves are waiting

for years for any kind of compensation. Yes, this legislation and asking those employers to pay for it is the way to go because essentially they are the ones who are abusing that system at the present time.

Mr Arnott: I am very concerned about your suggestion that a payroll tax should be implemented. I hear that when economic times improve, as I hope they do in the next few months, when the 18-month commitment is elapsed, there will be a new payroll tax of some sort to pay for this. Do you honestly, fundamentally reject the notion that a new payroll tax will inhibit job creation in Ontario?

Mr Clancy: Do I think it will inhibit job creation, the payroll tax of the amount that would be? No, I do not think it would inhibit job creation. But I think that can be a concern of some people. I am not making decisions for the government. If you are asking me to think for the government, I am not going to think for the government. I think the government's legislation is fair legislation, and the way the government has dealt with it is fair. But the argument of payroll tax is just a matter of how I think and how our organization thinks responsibility should be assessed. We have lobbied on that platform before, and we will continue to lobby on that platform. This is an opportunity to continue that lobby. It is not a matter of whether I think it will inhibit or not inhibit. I think it will make them a hell of a lot more cautious if they have to pay that kind of tax and then have to continue to pay that tax because that tax is being used.

I am not as scared of the good employer, bad employer question because there are good employers and there are bad employers. The problem is that the good employers should be insisting that the government legislate against the bad employers. If the good employers were as concerned as they should be about the bad employers, the people who are going to cause them that payroll tax, there may be a change in the whole system of whether we have good employers or bad employers, because we have some lousy employers in this province and in this city.

I think those are the kinds of things we see that could offset that kind of situation, and that is why we say the government should consider that payroll tax. With regard to the bill, I think it is an excellent bill, but there are some things where we may want to step farther ahead of the government. I am sorry for taking so much time.

Ms Dassinger: I just want to draw your attention to the example of Route Canada. You may remember it. It was dragged through the courts and finally there has been a settlement. But to reiterate what Pat has said about the cost being higher for companies, that was a publicly owned company. It was basically sold off at bargain basement prices by the Prime Minister to someone who did not even have a credit rating, who could not even get a credit card and months later went bankrupt. Those workers were very high-seniority workers. Most of them had been there in the area of 25 to 35 years. They were broken workers. It has taken them four years to recover only a portion of what has been owed to them. If there had been more responsibility and obligation on the part of that employer prior to

that little deal being made, then perhaps they would have acted more responsibly.

Mr Owens: Plus the social cost as well.

Ms Dassinger: Exactly.

Mr Arnott: I do not know if I understood you or heard you correctly. If there were an additional payroll tax, would you feel that it would encourage more responsibility by employers?

Mr Clancy: I guess we have in our community different ways of punishing people. We get into workers' compensation, the assessment for workers' compensation, how workers get assessed by work groups in workers' compensation. If we are going to judge how the business community treats its workers, we cannot always judge the business communities that are locked in as good employers, because they have strong unions that make them good employers. We have to get into the communities that are not good employers and that are not playing the game.

Maybe it is not the government that needs to protect workers from bad employers; maybe it is other employers.

All I am saying is that I am not really concerned about the issue. That is really not an issue with us. The issue with us is that there is going to be legislation that is going to make sure the workers come first on the totem pole for picking up losses. Whether it is done by general taxation or by a payroll tax, this is the real issue. We just think a payroll tax would be better than general taxation.

The Vice-Chair: The time has expired for your presentation.

Mr Clancy: I am sorry we have overrun our time. Take care of your problem and we would be here for half an hour.

The Vice-Chair: That is no problem at all. The committee was interested. I thank you very much for your presentation and for coming before the committee. I now ask for George McCullough, if he is here. Okay, not seeing Mr McCullough in the room, we will recess until 2 o'clock, when the committee will reconvene for the afternoon session.

The committee recessed at 1203.

AFTERNOON SITTING

The committee resumed at 1403.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Vice-Chair: We will reconvene the hearings and call the meeting to order. The Ontario Public Service Employees Union is first up. Could you please introduce yourselves for Hansard and for the members.

Ms Dalys: I am Beverly Dalys. I am here on behalf of the Ontario Public Service Employees Union. I have John Nicholson with me.

On behalf of the Ontario Public Service Employees Union, I would like to thank this committee for taking the time to hear us and to hear our position on Bill 70.

It is a very timely piece of legislation and very important now, particularly in light of the economy. This has been the worst year for Canada's economy in quite some time, and Ontario has been unfortunate to take the brunt of the downward turn. Plant closures and the latest business rage of downsizing have cost the province an estimated 250,000 jobs in the past year.

Many of these losses came as a surprise to the workers who discovered they no longer had a job to go to and they no longer had an income to rely on. It is encouraging, in the midst of these times, to see a government take a positive direction with these amendments to the Employment Standards Act.

It is particularly welcome to see a concern for workers whose job security and opportunities for financial planning have been jeopardized. OPSEU represents thousands of workers in financially vulnerable agencies and facilities, such as the 46 children's aid societies that are now in a deficit position. As a union that has a growing membership in privately owned companies that provide services to government, and I am talking specifically about contracting out, we take the threat of job loss very seriously.

In the public sector, decentralization policies have forced transfer payment agencies to balance their budgets and not to expect bailouts from the provincial government. This really makes a repeat of what happened in New York City this year with its financial crisis and the reverberations in which about 3,200 government employees were given two weeks' notice of layoff. That kind of thing is a possibility in Ontario now as well.

For our members in the private sector our interest is much more obvious. Private contractors are completely responsible for their own finances. As a result, OPSEU has a very keen and relevant interest in wage protection legislation.

When you do not know from day to day how long your job is going to last, it is agonizing and it is detrimental for workers, their families and their communities. A guarantee that workers will be able to recover moneys that are owed to them when, through no fault of their own, they find themselves unemployed is a crucial step for the wellbeing of the province.

The proposed amendments to the Employment Standards Act in this bill recognize that it is crucial for workers to receive all the money they are owed when their jobs

disappear. This legislation was drafted to cover workers whose employers have failed to pay wages, vacation, severance and termination pay.

Having these additional protections guaranteed by law is absolutely essential now, especially in light of the recent changes to the Unemployment Insurance Act, which of course is federal but covers everyone across the country, that make qualifying for UI a longer, more difficult process. It also means a lot of people spend less time receiving it and are forced to accept a little bit less in terms of alternative employment. Without receiving the money they are immediately owed, many workers would be forced, at best, into a desperate job search, often for lower-paying jobs, anything they can get, and, at worst, directly on to welfare rolls.

The money guaranteed in this legislation will make the difference for some laid-off workers who might otherwise be unable to search for meaningful work or to maintain themselves and their families while they explore other options, like retaining or relocation.

For these reasons, OPSEU commends the government for drafting this highly principled legislation and creating the wage protection fund.

Unfortunately, there are a growing number of working people in Ontario for whom this legislation will not apply. These are workers who have no recourse to vacation, severance or termination pay ever. These workers deserve a reasonable chance to avoid being immediately thrown on to welfare rolls and to find quality employment after losing a job.

A considerable proportion, possibly as many as a quarter, of Ontario public service bargaining unit employees are working under what is called unclassified status. These workers, like seasonal, or definite-term or task employees in the private sector, have managed to slip through the cracks in Ontario's labour legislation. Wage protection is just one more workers' right which they are denied.

Unclassified workers do not enjoy the same protection as classified permanent employees with whom they work hand in hand. In this way, the provincial government as employer sidesteps its own legislation.

There is a recent trend also for employers to technically hire workers on a fixed term or task and to extend these work agreements or contracts indefinitely. Unfortunately, workers in these situations are not afforded the same status and rights as their co-workers who have permanent positions.

John Nicholson, a steam plant supervisor at the Vineland horticultural research station near St Catharines, will bring to the attention of this committee the situation he and his co-workers are currently facing.

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Mr Nicholson: In a period of five years, we have been managed by as many contractors. On August 28, 1990, a contract for operating the plant, signed by the Ministry of Government Services and Johnson Controls Ltd, expired. The successor contractor, Jesco Ltd, had not yet finalized its contract.

We were directed by the Ministry of Government Services to bill for personal services. Two weeks later, the Ministry of Government Services signed power station employees on as unclassified staff for a one-month period, until this contract with Jesco was settled. It was not six months after Jesco assumed management of the power plant that the company went into receivership.

We have since missed regular scheduled paycheques and have made several frustrated attempts to recover our money. The Ministry of Labour, the surety company holding the performance bond and the Ministry of Government Services, for which the work is being done, have all denied liability for payroll. Meanwhile, we have suffered personal hardships. Debts have intensified for some workers who have had to refinance their homes. One worker's truck was repossessed. Others have had their telephones disconnected. All of us have paid NSF charges for cheques we have written that ought to have cleared.

The experience at Vineland clearly indicates the need for an effective system through which employees can receive money owed to them. It also points to the need for protection for many of the workers across the province who are now excluded.

I have provided continuous service for six years at Vineland horticultural, but have had several different employers. Certainly I feel I deserve the same protection as other workers who have six years' continuous service for one employer.

Ms Dalys: OPSEU's concerns about this legislation are twofold. To begin with, unclassified workers—and I am talking specifically about the public service—who lack seniority rights under the collective agreement are losing their jobs because of government downsizing and privatization. More job losses are going to occur as transfer agencies become insolvent.

Our second concern is that if employers' liability for unclassified or definite-term or task employees—and this of course applies to the private sector as well—is less than it is for regular employees, there will be a proliferation of this kind of employment. Employers will seek a way out, a way to save a little bit of money, to have a little less responsibility, and more workers are going to be excluded from this legislation. OPSEU is concerned that unless all workers are covered by Bill 70, there will be an increased transition from regular to contract employment in this province, as employers try to circumvent their responsibilities, and these amendments will protect far fewer workers than is presently intended.

We are confident that the disparity between definite-term and task employment and regular employment with regard to coverage under Bill 70 was merely an oversight by the government. There is no question in our minds that this principal piece of legislation was intended to cover workers in Ontario, not just a few who are becoming almost privileged workers who have a real, regular, full-time permanent job.

As such, OPSEU recommends what it believes will be a friendly amendment to the Employment Standards Act, and that is that clause 40(3)(a)—that is in the original act—be repealed to allow the legislation to allow definite-term or task

employees to benefit from the protections offered regarding termination of employment.

Thank you for your time. Are there any questions?

Mr Offer: Thank you for your presentation. Looking at the relevant subsection (3), as far as I can recall, that is the first time that particular matter has been brought forward to the committee. I was just trying to think what that would mean to the private sector. What is the impact of your amendment on the private sector, which may have a degree of contracts for services for which subsection (3) would qualify?

I was also thinking as we got on to that, would this kick in—let me just leave it at that, because I have not thought it all the way through. Can you give me some idea as to what implications that might have for the private sector?

Ms Dalys: Private sector employers?

Mr Offer: Yes. I am sorry, but I see this as that an employer has contracted with an employee for a particular service over a particular period, with a beginning to the contract and an end to the contract. You are saying that right now subsection (3) puts that outside of entitlement to, for instance, termination pay and things of that nature. You are saying by moving that away, that now makes that person entitled to notice. There are those who might argue that the expiration of the contract is something which the employer and employee have in good faith contracted and determined. I wonder what that means.

Ms Dalys: I think it means several things. OPSEU's experience has been that the application of definite-term or task employment often is not definite-term or task. There are often contracts that are signed over year after year after year. It is not someone who is coming in to do landscaping once. It is someone who is coming in on contract to do regular, ongoing work. These are people who generally expect that their contracts will turn over from year to year and who are putting service in with the employer often because there is not as much permanent work available. This is an option that has been taken up by employers at a fair bit. We see it. We have more experience with it in the public sector, but certainly it is making inroads elsewhere.

The other point is that, yes, the expiration date of a contract may serve as notice, but what happens to a person who is on a personal services contract for a year, and six months into the year the employer goes under? That person does not have the same rights as someone else who might have worked there permanently or become employed as a permanent employee and then six months later did have the protections under part XI of the ESA.

Mr Offer: We could discuss this, but my initial reaction without really thinking this all the way through, is that the possibility could be part of the contract of employ; there could be provisions within the contract of employ to deal with that. I do not know if that would happen. People who contract for landscape services, apartment buildings, might have a landscape contract which is landscape in the summer snow removal in the winter. A home owner might have the same thing. There may be, and in many cases there is, a contract entered into. Would that, in the event that for

some reason the contract is not carried out, put them in the position of having this fund?

I am sorry, I do not have the question fully unfolding in my mind, but I just have a sense that this has some very far-reaching implications. I do not want to pass any judgement on this. Certainly we will be looking very closely at it, but I feel it has some very far-reaching implications which we must, in a responsible way, appreciate before we can properly address this issue.

Ms Dalys: If I can respond to that on two points, first, you mentioned the possibility of a home owner who might be contracting for landscaping in the summer, snow removal in the winter. Without wanting to get too far into legal technicalities, in the Ontario Labour Relations Act there is a distinction between dependent and independent contractors. Our concerns are with dependent contractors. Definite-term or task I think refers more to dependent contractors. That is who we are concerned about.

As to far-reaching implications, of course there are. That is why we have developed this position. We are afraid of far-reaching implications which boil down to an employer saying, "If we put this person on contract for a year, and then put him on contract for another year and another year after that, we can shirk some of our responsibilities." That, and I am sure I speak for OPSEU's membership, is a far-reaching implication, a very important one.

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Mr Arnott: How would you favour that the wage protection fund be financed?

Ms Dalys: I would have to think about that. I stand in defence of the wage protection fund; that has not been the focus of my concern. I really have to think about that question. I would be happy to respond to you in writing if you are interested.

Mr Arnott: Yes, thank you.

Mrs Witmer: You indicated that you do not know when this brief was put together. Was this put together by the executive of OPSEU?

Ms Dalys: This was put together by the education and campaigns department of OPSEU.

Mrs Witmer: So it is the only group that has had input into this submission.

Ms Dalys: There have been discussions with members who are affected, unclassified members. Obviously John Nicholson, who has been on several contracts and has spent some time as an unclassified public service employee, has had input.

Mrs Witmer: You mention here on the first page that you are a union that has a growing membership in privately owned companies. Can you clarify that?

Ms Dalys: With privatization practices coming along—for example, in the industry of natural resources where a lot of work is contracted out—we have been making applications through the crown transfers legislation to take over those units.

Mrs Witmer: Have you been successful?

Ms Dalys: Crown transfers, as you know, take a while. We are going in the direction of becoming a private public-sector union. We are developing, as privatization goes along, to follow that trend. As much as we are against it, we are a union first and foremost, so we do have an interest in the private sector.

Mrs Witmer: But at present there is no involvement of your union in the private sector.

Ms Dalys: There is. We are involved in crown transfers. That is involvement in the private sector.

Mrs Witmer: Has your membership directly been impacted by companies closing down and your members losing their wages?

Ms Dalys: We have members who are involved in contracted-out companies, where we have crown transfers going through, whose jobs are on the line. Yes, John Nicholson is one.

Mrs Witmer: But only in that regard.

Ms Dalys: At the moment, yes. We have members, as I explained before, in transfer payment agencies. The government is saying it cannot bail out these agencies when they get into trouble. We have those.

Mrs Witmer: But it is a little different from some of the people who have come in here and indicated they have worked for a company for 25 years and suddenly it has closed its doors and they are left without wages and severance and termination. I guess I am trying to establish where you are coming from, as opposed to some of the other individuals who have been here.

Ms Dalys: The perception of this bill is that it is oriented towards the private sector, which it is. But to say that it applies only in the private sector is a misnomer. What we are coming here to show you today is that with the expansion of unclassified employees and with the expansion of contracting out and crown transfers, we have a keen and relevant interest now, and unless some of these policies are reversed, we will continue to have a keen and relevant interest.

Ms S. Murdock: Just for the benefit of people who are not here every day, the section you are asking to have included in Bill 70, on contracted-out employees, is a section which exists within the Employment Standards Act right now but is not part of Bill 70. What you are asking us to do is amend subsection 40(3).

Ms Dalys: Yes.

Ms S. Murdock: I do not have a question. My understanding is that the Employment Standards Act is under review right now and that is one of the areas which is seriously being looked at, due to the extent of your lobbying and excellent work in that regard. The mandate at this point under Bill 70 does not cover that area, and I am wondering how you would respond to that.

Ms Dalys: A couple of points: one, of course, is that when Bill 70 was drafted, at the beginning it talks about how it is harmonized with the existing Employment Standards Act. For example, at the beginning, section 1: "Subsection 2(3) of the Employment Standards Act is amended by striking out '47 or 49' in the fourth line, and substituting

'39c, 39f, 47 or subsection 49(1) or (2).'' That is harmonization. What I am bringing up is another area.

Ms S. Murdock: You are asking us to add subsection 40(3) to that list.

Ms Dalys: Yes.

Ms S. Murdock: I had not given it any thought so I really cannot say, but certainly I will look at it. I cannot say any more than that, because I have to look at the ramifications. There is a committee set up to study the entire Employment Standards Act.

Ms Dalys: In relation to Bill 70, which is a very timely bill, given the economy, we also have a situation with unclassified and contracted-out people, etc, which is very important in that respect. Perhaps it should be looked at in the context of Bill 70.

Mr Owens: What is the current situation, Mr Nicholson, with yourself and your colleagues with respect to your moneys?

Mr Nicholson: We would like to know too. Presently the Ministry of Government Services states that we work now for the bonding company, which is Alta Surety Co. Alta states that we are not employees of theirs. Alta has a company in Montreal that disperses its funds, Assistech Canada, and it also states that we are not its employees. No one seems to want to take us on as an employer, yet the Ministry of Government Services insists that we stay. They acknowledge that our job is important to the Ministry of Government Services and the Ministry of Agriculture and Food, the client ministry involved.

As for our pays, we have been paid up until July 19, I believe, but that was after a lot of fighting through every avenue we could possibly think of. We are afraid that it is going to take another 90 days at least for them to rewrite this contract, reissue it for tender, and during this time we will have to continue to fight for our wages, again through all the avenues that we have been using.

Mr Owens: So I guess hung out to dry is a fairly apt description.

Mr Nicholson: Yes, sir.

The Vice-Chair: Thank you for your presentation. It is the first one we have had from the public sector, so I thank you for your outlook on it.

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INFORMATION TECHNOLOGY ASSOCIATION OF CANADA

The Vice-Chair: Information Technology Association, please come forward?. Please introduce yourselves for Hansard.

Ms Moyer: Thank you very much for taking time to listen to us today.

Mr Chairman and ladies and gentlemen of the committee, my name is Janice Moyer, and I am the president of the Information Technology Association of Canada, or ITAC. I have with me today two members of our association. On my right is Allen Berg, who is the vice-chair of Enterprise York, and also the president of Computer Methods, a small software company that has been in business in

Ontario since 1975. On my left is Richard Newman, who is the manager of employee relations at IBM Canada Ltd.

I would like to spend a couple of minutes this afternoon acquainting you with ITAC and why we are here today, and then ask Allen and Rich to address specifically our comments on Bill 70.

Information Technology Association of Canada represents the computer telecommunications and related office equipment, hardware, software and services industry in Canada, an industry with revenues of approximately \$35 million in 1990 and employing approximately 280,000 people in Canada. Ontario has the lion's portion of that figure, with provincial revenues of approximately \$20 billion and with some 150,000 employees in Ontario.

Information technology has been Canada's fastest-growing industry sector for about the last 40 years. It currently has a growth rate of more than 8%, even in these recessionary times, and some of the sectors, such as software and services, are growing as fast as 14% per year.

We are currently generating in the area of 8,000 new jobs per year, approximately half of these being in Canada, most of them in small and medium-sized businesses. The mission of our association is twofold. The first is to promote the effective use of information technology by Canadians to help improve our standard of living and our international competitiveness as a country, and the second to provide leadership on issues that affect the growth and the profitability of the information technology industry in Canada.

The association brings three important perspectives to bear on the discussion surrounding Bill 70 that I would like to review with you today. The first perspective is that our industry is directly and indirectly at the heart of the sweeping changes that are under way in the Ontario economy right now.

Technological innovation in all enterprises is driving the shift from our industrial and service-based economy to a post-industrial, knowledge-based economy. Technology is the underpinning, and constant change is the overriding characteristic today. The world is paying less and less for Canada's resources. Increasingly, employers are far more interested in the knowledge value that people can add to a product or service for sale.

The worker of the future will increasingly be expected to add intellectual, rather than physical, value to the task at hand. Let me quote a paragraph from Robert Reich's new book, *The Work Of Nations*:

"The real economic challenge facing the United States in the years ahead—the same as that facing every other nation—is to increase the potential value of what its citizens can add to the global economy by enhancing their skills and capabilities and by improving their means of linking these skills and capabilities to the world market. [We need] to encourage new learning within the nation and to smooth the transition of the labour force from the old industries."

In case you have any doubt about the pervasiveness of technology in our lives, let me give you a couple of pieces of information from the Harvard Business Review recently. In 1970, less than 50,000 computers were installed worldwide. Today, more than 50,000 computers are sold

every day and more than 80% of all those who use computers today had never even touched one in 1980.

The second perspective is that our industry is fiercely competitive and operates in the context of an international marketplace. Technological lifespans and competitive advantages are now measured in months rather than in years. Our member companies today are both competitive and full of knowledgeable workers. Our technology and our people in turn help other Canadian industries to become internationally competitive.

To survive, our companies must lead rather than react to technological developments taking place in the United States and the Far East. You and we should not think of trying to slow down or stop technological change. We will all be far better off to channel our efforts to working together to find ways to accommodate and to take advantage of technology in various workplaces and to preparing Canadian workers for the future.

A Statscan survey recently indicates that Canadians are ready for this. Almost two thirds of Canadians surveyed think that the introduction of new computers and other technology has made their work more interesting and meaningful and 96% feel that their job security is not affected by or in fact has been improved by the introduction of computers—surprising, I think, to most of us.

Canadians are adopting and enjoying information technology, partly because it is defining today's jobs. Information technology has been called the single greatest factor in determining the competitive potential in all other industry sectors today.

Finally, the third perspective we bring to bear is that our industry employs people who are highly skilled workers. We treat our employees as partners who are critical to our success and we make major investments in their education and training. We pay them above-average wages, provide them above-average benefits and encourage them to participate in the operation and the success of our business. This industry is one that thinks of its employees as valued partners rather than workers. In fact, our industry is our people. They are our biggest asset.

Because of this and because our industry tends to be at the forefront of our shift to the knowledge-based society, many of our companies have created employee relations models in addition to the existing industrial relations models to ensure employee involvement in the day-to-day conduct of their work and the assurance of fair treatment. Thus, employment legislation in its broadest sense needs to take these models into account.

By way of conclusion, let me add that ITAC's vision statement is helping Canadians build a better future through information technology. With that background on the association and the industry, I would now like to ask Richard Newman to make specific comments on Bill 70.

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Mr Newman: Mr Chairman, ladies and gentlemen of the committee, in April of this year when Bill 70 was first tabled, many of us in the private sector were surprised and shocked by some of the elements of this bill. To our knowledge, there had been little if any consultation, at least

with business, regarding the extension of directors' liability to include severance and termination pay and the inclusion of officers as carrying the same accountability as directors.

Needless to say, we were therefore delighted by the government's responsiveness to business concerns when on June 5 the minister announced his intent to realign this bill with the Ontario Business Corporations Act. However, we still continue to have some concerns with Bill 70.

First, the broadened definition of wages under the wage protection program will in future include severance and termination pay, as we all know. The end result of that, however, will be to substantially increase final fund settlements in cases regarding insolvencies. This program, therefore, seems destined to become another level of social safety net with the costs borne by the taxpayer in the short term. Predictably, in the long term, these costs will be borne by the remaining employers in Ontario through some form of payroll or head tax. I will come back to that later.

Second, Ontario currently provides the highest termination and severance provisions of any province in Canada. We compared the cost of terminating the employment of 50 people with representative lengths of service and whose pay averaged \$35,000 annually. The costs for Ontario were just over \$600,000. The next closest province was Manitoba at \$335,000. All of the rest ranged somewhere between \$50,000 and \$300,000. Now these figures only include termination and severance pay. They do not include back wages, vacation pay or holiday pay and the like.

Earlier this week I asked our legal staff to check what would happen in New York state if 50 people were laid off. They went back to our US counterparts and determined that it would be nothing under the law, and I did not believe that. So I sent them back a second time and they have not got to me yet, but on the first go-round their point to me was that in the United States employment is employment at will and it is looked at in that context, as opposed to being under the common law approach that we take in Canada. What that means is that in the United States there will be some form of severance pay or termination pay for at least some employees. It depends on the custom of their firm.

Clearly much of this expense being generated by termination and severance pay will eventually be picked up by the employee wage protection fund. The degree will depend on the extent to which the employment standards provisions change and the degree to which the board exercises its regulatory ability, ie, the \$5,000 cap.

Third, with respect to group terminations, there have been discussions this year about the possibility of increasing termination and severance amounts and changing these thresholds and caps, particularly as they regard group terminations. In that Bill 70 hooks directly into employment standards definitions, we worked out the potential future costs for the same group of 50 people using some of the ideas aired in consultations this spring, and the figures became astoundingly high when taken in the context of other jurisdictions. In the case of that 50 in Ontario, using middle ground assumptions that were discussed in the consultation proceedings this spring, that package came to over \$1 million.

Is all of this a problem? It will not be a problem for those who view this as a socially desirable termination insurance kind of program funded by some form of wage premium. Bill 70 will be a big problem, however, to an investor trying to decide in which province or state to establish a new facility.

Earlier in these proceedings right here in this room, a payroll tax was proposed as a right, just and relatively inexpensive long-term solution to funding. This program, when you couple it with a payroll tax, will drop with a thud on the scales when weighing in against the investment case for Ontario. We have to recognize that it is not only the cost of doing business in a given environment that investors will measure. They will also look for indicators of the different kinds of influences and mindsets that are at work in these different jurisdictions. They will be looking at their decision in the context of what is going to happen five, 10 and 15 years out. Is my investment going to be secure? They will be looking at the broad undercurrents as well as the specifics.

Some of the people whom I heard speak earlier this week at these proceedings simply do not understand the realities of how these investment decisions are made. We are not sloughing off social responsibility. What was sloughed off is that the funding of this program is a relatively insignificant cost taken against the payroll systems of industry. The message that comes through to someone who is betting his own personal savings for his future wellbeing speaks a lot more loudly than that.

To help position Bill 70 in the context of small business where most of the jobs, as Janice said, are going to be created in the future, I will turn this over to Allen Berg who, as a small business owner, can speak in that context.

Mr Berg: Mr Chairman, ladies and gentlemen of the committee, as noted earlier, I come here as a small business owner. I also bring a unique perspective in my capacity as vice-chairman of the board of Enterprise York, an organization within York University.

Enterprise York is one of the six provincial centres of entrepreneurship established by the previous government of Ontario. The purpose of these centres is to encourage entrepreneurship in Ontario. My role is to organize the staff of the centre and to direct their programs in serving as a catalyst to help small business thrive and expand in Ontario.

The high-tech industry encourages the growth of small companies. The products tend to be relatively complex. Potential use of our products is everywhere. It is labour-intensive, but the level of skill involved tends to be high, and our industry is exceedingly competitive. These small firms tend to be highly specialized and many deal in a marketplace niche with a very limited range of products, so there is not a lot to fall back on when your main product develops problems.

Let us pretend for a moment that you are in your late 20s or 30s. You have worked in the high-tech industry for a few years and have a fantastic idea about how to adapt personal computers to the business requirements process of firms in the construction industry. Your product will enable construction companies to be much more competitive and profitable.

You do not have much capital and cannot get much of a line of credit. You want some of your acquaintances or even relative strangers to serve on your board so you can take advantage of their unique expertise. In preparing your business plan with help from your lawyer and accountant, you find that there is a whole lot more involved than you initially thought. As you think your way through the cost and location of your facilities, the cost of employing 10 to 12 people and the rules and regulations at all levels of government, you suddenly focus on the fact that some environments are better than others in enabling you to reduce your risk of failure.

Remember now, it is your money, your risk, your effort. It is not some nameless corporate executive who is going to make this decision. Also, you are probably a person who appreciates having grown up somewhere in Ontario and who wants to stay here.

I went through this decision in 1973. If I were to go through it today, I am not sure what the answer might be. Clearly there would be some clear-cut economic advantages in choosing to locate your new business outside of Ontario. This presumes you want to minimize your risk. However, just as big a problem for us in Ontario is the fact that many potential entrepreneurs will go through this process and decide to do nothing. That scares me. That possibility would clearly cost us in terms of unrealized job opportunities in Ontario.

Let's assume for the moment that you do go ahead. Your business prospers and grows to 50 people. In time, however, you find it more difficult to remain competitive in your market segment, and a few years later start to lose money. In looking for a so-called white knight, you find that no one really wants to buy into a failing business in which the main assets are its people and, to a lesser extent, its product and customer base. The liabilities by this time are primarily vested in its people, ie, termination and severance pay. As I observe Bill 70 and its amendments, I see its future structured with the potential to extend termination and severance pay requirements, add to the responsibilities of owners and directors, increase the \$5,000 cap and the like.

You as the hypothetical owner find yourself between a rock and a hard place. You cannot sell your business and you cannot keep it going. Caring and honest owners, directors and officers, when faced with a decision like this, will find themselves wanting to fold up the business sooner rather than later and cut their potential losses, rather than keep struggling when there is a risk of losing everything including one's own personal assets.

Bear with me for one last scenario. The owner does close the business and the receiver is now faced with trying to find a buyer. Change your role to that of a potential buyer. Does it make sense for you to take over the assets and the liabilities of an operation when the previous owners, directors and employees have a divided attention as to how they will fare under the provisions of Bill 70 versus getting on with the future?

In Bill 70 lies another potentially serious problem. All the well-funded machinery of the board will be in place to make things very complicated and uncertain for a long

period of time for the previous management team, and by association, for the incoming management team.

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What Bill 70 is about is the protection of workers' wages. When we consider the long term, however, our association sees it as one more government-initiated structure that will inhibit the generation of jobs not only in our industry but in other growth industries and industries that need to be restructured and consolidated in view of the larger implications of the international marketplace in which Ontario resides. We feel there should have been much more consultation with business before proceeding with the initiation of this bill. It is still not too late to undertake such further consultation, and we invite you to take advantage of this offer.

Thank you for this opportunity to present these observations.

Ms Witmer: Thank you very much for a very informative presentation. I think you have pointed out very well the need for us to take a look at the changes in the global economy and to prepare our people in order that they are suited to assume jobs in other areas.

In the very last paragraph, you talked about the need for more consultation with business. If this consultation did take place, what would you be encouraging the government to do regarding Bill 70?

Ms Moyer: Rich, I know you have given a lot of thought to that. Would you handle that, please?

Mr Newman: I have two layers of desire, I guess. The first one is probably one that would not appeal to this committee, but I should set the stage for it. I would like it rethought actually, if I had a chance to put my input into it. I see it as a social program really. I think the aegis of it probably is prompted by social stimulus. Yet what is happening, in its current form, is that it is going to cripple business, especially small business. So I would like it rethought.

I think if it were possible to stack it somehow or rationalize it with the UIC, turn it into an insurance program and fund it out of general revenues, that would be the right thing for this province, for both workers and employers.

Recognizing that might not sell, my second suggestion would be that you unhook it from employment standards, that you in fact take out the termination and severance pay and leave it strictly what it was before, what the intent of the Bankruptcy Act is and things like that. Leave it to earned back wages and leave it to earned vacations and holidays and things that are there from the past. Moreover, I would put the cap back with the Legislature.

Mrs Witmer: As opposed to regulation?

Mr Newman: As opposed to regulation.

Mrs Witmer: Certainly if it were limited to strictly vacation, the \$5,000 cap would be changed dramatically.

Mr Newman: There are cases—you just heard one before this—where people in fact go and work for nothing, because as long as there is light at the end of the tunnel, maybe you will accumulate quite a bit of back pay.

Mr Owens: My question is around the statement that Bill 70 will inhibit the generation of jobs. I like the statement and I will use it later in remarks, but in a different context.

My comments are around the fact that the wage protection fund is not meant to be a social program to be universally accessed by all. When one looks at IBM, IBM pays its way. It pays its employees well. I understand they have just signed a letter of intent with Apple Computer. There is going to be a good alliance there. They are good corporate citizens. The problems we have, and the problems of the workers who have testified before this committee, the workers we have all seen in our constituency offices, have come from employment situations which are not like that at IBM. These are the people we are aiming to protect. I am not quite sure how something that takes place at the back end, where all possible avenues have been exhausted, is going to inhibit, at the front end, the creation of jobs.

Mr Berg: I will answer that because I have seen this quite a few times in the last year or year and a half, wearing my different hats, what I do as a small businessman and also as vice-chairman of Enterprise York. I do not think anybody opposes, certainly not I, having the wages paid of workers of companies that fold or are in receivership. I think that is a given for anybody I know of.

What bothers me is to try to resurrect companies that are in receivership. Usually the banks, as many of you probably know, do large ones, but they also pull the plug very quickly on small corporations and small businesses.

Mr Owens: Not according to the Canadian Bankers Association.

Mr Berg: That is another argument.

Mr Owens: The white knights of industry, according to this morning's testimony. That notwithstanding, yes?

Mr Berg: That is not up for discussion now. But I see a lot of small businesses that are right on the ledge. They are either pushed over in a few days by the bank or have a few months and then they go out. A lot of them do not go into bankruptcy; they go into receivership. What bothers me is really how to recover and raise something from the ashes for small corporations. A lot of them are in the high-tech industry because they have very few hard assets. Their assets are in their people.

If I were an investor—and I have looked at them as an investor—this legislation would scare me. It scares me because one is putting in a board that will not make big decisions. The board's decisions, when I read them, are over 45 days or over 90 days, and it is not conducive to putting a deal together quite quickly to save the jobs of companies or people that are in receivership or close to bankruptcy.

I think it is the severance and the termination packages that bother me. I do not know, if I buy from a receiver, what the liabilities are on a successor corporation, because they may well carry over. This is not a bankruptcy but a receivership. That is what scares me and that, in my opinion, is what will lose jobs for you because I will not look at it. I will say, "What's the use? I will go and look at a situation in Buffalo." That is all.

The Vice-Chair: I am going to have to jump in here because it is now Mr Offer's time. I am afraid that unless Mr Offer does not exhaust his time, you are out of luck this time, Mr Klopp.

Mr Offer: I will be, as usual, as brief as possible. You know there is legislation pending in the federal area around this whole issue, Bill C-22, I think it is, which calls for protection of wages and vacation pay in bankruptcies and which is to be financed through a payroll tax. I wonder if you have had time to look at that and if you have any thoughts as to that. We are obviously not dealing with that particular legislation, but a lot of people have come before us and talked about this whole issue of harmonization.

Mr Newman: If I remember correctly, it was a \$2,000 peak that they would pick up, and the harmonization would be that you would pick up the other \$3,000 and would administer it through the provincial ministry.

Mr Offer: I do not think that is it.

Mr Newman: For the same reason that I do not think we should be doing a payroll tax or a head tax, levy or whatever, at the provincial level, I feel the same way at the federal level. Going back to this gentleman's comment, it is a social safety net used only in certain specific cases of insolvencies where in fact it is not forthcoming. It is a form of insurance, as I see it, and it could be paid for out of general revenues.

I think what the federal government is doing is absolutely wrong. They are sending a message to business all across the country now, in the sense that the mindset at work in Canada is really not to foster the creation of jobs and to leave employers free to put jobs together, so much as it is to have employers pay the costs of the phase-out of old industries and the phase-in of new industries. That I see as a broad societal problem.

1500

Mr Offer: Very quickly, we have heard of a potential impact, no matter how it is funded, whether it be through a payroll tax, which is a possibility down the line, or through general revenues, that there is going to be, no matter what, an impact especially on small business, the small business person having to try to access insurance, which is a cost of doing business. Whether they are successful or not is up in the air. Mr Berg might want to share with us that aspect.

Mr Berg: Mr Offer, I will be as brief as possible. When I look at a business, or when people are walking in here, pieces and pieces of legislation being piled on small guys like me, we are just throwing up our hands and saying: "What's the use? Let's go to another jurisdiction." You can write all the legislation you want. We are just too overburdened. In the last year and a half, we have had or possibly will have the GST, two bills that may affect us through employment, your bill and the bill from the federal government, and then a tax on payroll basically for health costs. I do not have a lawyer or a legal department such as IBM that sits around and reads acts, unless you want to subsidize it. What I have is myself. You are cutting into my time of generating profits or business or new enterprises, you really are, and this is just another piece of

legislation where many people like me will say: "What a day. There must be easier ways of doing business."

Mr Newman: I would make one last comment from my perspective, I guess. As I look at IBM with 12,000 or 13,000 employees, I cannot conceive of our growing in the next 10 years, in the foreseeable future. Our whole focus today is to try and lean up. For the first time in my 33 years at IBM, we are five months into a year and we are negative. We are losing money. It is that kind of thing that is driving us to link up with Apple; two historically hostile organizations.

Mr Offer: I suppose there are also transnational competitive pressures sort of driving you—

Mr Newman: Yes, there are. That is what is driving, but this is what is driving Ontario today. It is not just driving IBM and Apple; it is driving every organization you have got. My point is that your new jobs lie with organizations like Allen's. They do not lay with the IBMs and the Apples, so take care of them.

Mr Klopp: They are selling stock.

Mr Newman: I wish. Not another one heard from.

Interjections.

The Vice-Chair: Okay, please, some order. I wish to thank you very much for your presentation and to let you know, sir, that in reality I think we have had about three small technology people come in and present, so we recognize there is some concern within that group.

Ms Moyer: Thank you, and if there is anything else we can do to be of assistance, we will make that offer at any time at your convenience.

CANADIAN UNION OF PUBLIC EMPLOYEES, ONTARIO DIVISION

The Vice-Chair: Thank you. Our next presenter will be the Canadian Union of Public Employees, Ontario Division. There is a slight typo on the agenda, but it is okay. For the sake of Hansard and some of the members, would you please identify yourselves and introduce yourselves to the committee.

Mr Stokes: My name is Michael Stokes and I am president of the Canadian Union of Public Employees in Ontario, and with me is Brian Blakeley, our legislative liaison.

The Ontario division of the Canadian Union of Public Employees welcomes this opportunity to present our position on the employee wage protection program to be enacted by Bill 70, an act to amend the Employment Standards Act.

With over 400,000 members, CUPE is the largest labour union in Canada. The Ontario division of CUPE represents more than 151,000 members employed in both the public and private sectors in all regions of Ontario. CUPE members work in a wide range of settings, including rest and retirement homes, nursing homes, homes for the aged, associations for community living, children's aid societies, the Ontario Housing Corp, the Workers' Compensation Board, municipalities, public utilities, Ontario Hydro, school boards, hospitals and universities.

Many of our members work for employers in situations of very real financial hardship. These employers, to name but a few examples, include day care centres, rest and retirement homes and nursing homes. Many of our members have experienced the hardships of missed paycheques or an employer that goes out of business with moneys owing for wages, vacation pay, termination or severance pay.

A current and very real example of the financial uncertainty that CUPE members face in their day-to-day work lives is the situation of Garson Manor in Garson, Ontario. This private nursing home has, over the last 10 years, switched hands several times and our members have become accustomed to living their lives under the constant cloud of the imminent bankruptcy of their employer. On one occasion this spring, the employer presented our members with cheques for \$10 in lieu of wages. This is but one example of CUPE members who could have benefited from an employee wage protection program had one been in place when they required it.

On behalf of CUPE members at Garson Manor and the many other health care workers in similar situations throughout the province—Garson Manor is in by no means a single situation; it is a situation that is plaguing rest and retirement homes across this province—as well as all other workers in Ontario, CUPE Ontario, as indicated, is pleased to have this opportunity to comment on the employee wage protection program introduced in this past session of the Legislature.

In our view, there is a very real and pressing need for a wage protection program in Ontario. The current recession is without question the worst to have hit the province since the Great Depression. Job losses in this province have totalled over 214,000 in the first year of this recession, compared to 89,000 in the first year of the 1981-82 recession; 97,000 jobs were lost in the manufacturing sector compared to a drop of 76,000 in 1981-82.

The rate of job loss in Ontario has been over twice that of the national average. In Ontario we account for 80% of the national job loss. Many of these jobs are gone for ever. Like jobs in the resource sector, manufacturing jobs are hard to replace. It is important to remember that it is in the lower-paid jobs of the service sector where most new jobs have been created over the past decade. Increasingly it is in the service sector that workers displaced from the resource, manufacturing and industrial sectors, as a result of the restructuring of the Canadian economy brought on by the free trade deal and the goods and services tax, must look for employment.

In June of this year, the Minister of Labour informed the Legislature of Ontario that the employment standards branch of his ministry had received more than 13,000 potential claims for compensation from workers. That means 13,000 Ontarians have not been paid wages since the Premier announced the wage protection plan in October 1990. These workers were unable to collect their earned wages and other entitlements due to their employer's insolvency, closure or simple failure to pay. The Ministry of Labour estimates that in the first 18 months of the employee wage protection program, more than 50,000 workers will qualify for compensation.

Judging by the severity of this recession, a portion of those 50,000 citizens of Ontario will no doubt come from CUPE workplaces, be they day care centres, nursing homes or community social service organizations. Receiving up to \$5,000 in compensation for unpaid earned wages, vacation pay, severance and termination pay will undoubtedly help these workers and their communities substantially.

When the Minister of Labour, the Honourable Bob Mackenzie, introduced the legislation creating Ontario's employee wage protection program, he said, "We have to take measures to increase protection for workers so that they do not become victims of circumstances they cannot control." Mr Mackenzie also stated, "Workers are entitled to receive the money they have earned, and they must be assured that this money will be given to them."

CUPE Ontario strongly supports this position of the Minister of Labour. Workers should be assured that they will receive payment for their labours.

1510

While the need for wage protection is highlighted during times of extremely high occurrences of bankruptcy, such as during the current recession, the need is none the less important in good times. Businesses fail for a myriad of reasons, as the table from the Brown commission report indicates. It is on page 6 of our document.

The employee wage protection program proposed by the government is, as we understand it, meant to reimburse workers for unpaid wages, vacation pay, termination and severance pay not paid to them as a result of employer bankruptcy, abandonment or any other failure-to-pay situation.

As we see it, the program has two main components: first, to compensate employees for lost wages to a maximum of \$5,000, and the EWPP will cover earned wages and vacation pay as well as the minimum amounts of severance and termination, as outlined in the Employment Standards Act; second, the creation of an expedited appeals process for employers and a new adjudication system for employee appeals.

The program promises to provide quicker access to unpaid wages for employees than they are entitled to under the existing system. The legislation also reaffirms the responsibilities of directors of a business corporation with regard to their obligation to make good on unpaid wages. The bill as amended does not appear to extend any new liabilities to employers or their agents.

Currently a worker who is owed wages, vacation pay, termination or severance pay has recourse to the employment standards branch of the Ministry of Labour. Following an investigation of the worker's entitlement, an employment standards officer has the authority to issue an order to pay against an employer. The maximum amount that can be so ordered is \$4,000 plus any outstanding severance pay amounts. However, despite the best efforts of the employment standards officers, it often proves impossible to collect these amounts.

A worker entitled to wages, vacation, termination or severance pay is recognized by the federal bankruptcy laws as an unsecured creditor. Since workers' claims under the current bankruptcy laws rank behind those of all the

secured creditors, such as financial institutions, their claims are rarely, if ever, paid. Many workers are therefore unable to collect wages, vacation, severance or termination pay owed to them by their bankrupt employers.

Recently the federal government has announced plans to amend the federal bankruptcy law to provide some relief to workers who are owed wages and vacation pay. However, they propose covering only \$2,000 of earned wages and vacation pay from a special fund to be established from a new tax. It seems unlikely that this proposal will make it through the legislative process in Ontario or in Ottawa.

The inadequacy of the current process for recovering unpaid wages and other moneys has been documented by a number of reports, including the Premier's Council report entitled *People and Skills in the New Global Economy*. An excerpt from that document reads:

"Ontario should provide a wage protection advance to all workers who are owed wages, vacation pay, contributions to benefits and pension plans, termination pay and severance pay by employers who shut down and default on their legal responsibilities. Ontario must then vigorously pursue recovery of these funds by all legal means available."

That is on page 277 of the report.

The Brown commission report also recommended changes to allow employees to have increased rights to moneys owed to them for unpaid wages under bankruptcy laws.

Clearly it appears that this government has taken into consideration the recommendations from those two reports in introducing this much-needed and progressive legislation to protect the wages, vacation, termination and severance pay of the workers of Ontario.

The government of Ontario, in proposing this legislation, has moved to ensure that compensation owed to employees is paid in a timely manner. Under the EWPP appeals may be initiated by employees, by employers, by directors or by the director of employee standards. The government has announced that employees can file claims for unpaid moneys dating back to October 1, 1990. An employee can file a claim for any unpaid moneys with his local employment standards branch office. To ensure the timeliness of payments from the EWPP, hearings and appeals by employees will be required to be scheduled within 45 days after an application to appeal has been made. Impartial referees will then be required to make their decisions within 90 days of the initial hearing.

In most cases, it appears that no payments from the EWPP will be made prior to the conclusion of any appeal proceedings. However, an adjudicator or referee hearing an appeal will be able to order an interim payment for any portion of the claim amount that is not found to be in dispute. Payments will also be made to workers while an appeal by directors about their status is proceeding.

The EWPP will, as we understand it, be administered through the employment standards branch of the Ministry of Labour and financed out of general tax revenues. Employment standards officers and area officers will investigate all claims for unpaid wages, vacation pay, severance and termination pay, as is the current practice, to identify employees' eligibility for payment under the EWPP.

In conclusion, I would say that in our submission we have documented:

1. That there is a very real need for wage protection in Ontario, both during times of recession and during times of economic prosperity. The need is clearly reflected in the statistics on full and partial plant closures and the estimates of total financial loss to workers presented in our brief. The EWPP is needed to offset the financial penalties to workers, their families and the communities in which they live of plant closures, bankruptcies and other situations leading to a failure to pay earned wages.

2. Why CUPE Ontario supports the initiative of the Ontario government in amending the Employment Standards Act to establish the employee wage protection program.

When the Minister of Labour, the Honourable Bob Mackenzie, introduced this legislation, he noted that it was both "a major achievement in strengthening the rights of workers in Ontario" and "an integral part of our government's comprehensive approach to labour adjustment."

CUPE Ontario strongly supports the creation of the employee wage protection program through Bill 70 and sincerely hopes that the government of Ontario will continue in its efforts in this regard. CUPE Ontario looks forward to the day, hopefully a day in the near future, when the people of Ontario will have a comprehensive system of labour adjustment in place. The employee wage protection program is a much-needed and timely first step in this process.

We would like to thank you for your kind consideration of our position on the employee wage protection program.

Mr Owens: The Ontario Public Service Employees Union made mention of a problem with respect to government services being contracted out to private sector employers and these private sector employers then denying responsibility for payment of wages when they have gone out of business. Do you see that happening within the CUPE sector around nursing homes or children's aid society group homes or homes for the developmentally handicapped?

Mr Stokes: Absolutely. The situation in all of those sectors that you mentioned is outrageous. Those services are best provided by public employees. When they are contracted out to companies, often these companies find themselves in financial difficulty and the people who suffer are not only the clients but the workers, who are denied wages and benefits that are rightly owed to them. It creates quite a stressful living condition, as I said, for the residents of those homes as well as the workers.

Mr Owens: We really appreciate your support. Do you see any problems within the legislation, any recommendations you might like to make as to how it might be fine-tuned?

Mr Stokes: Not offhand. We see it as a very progressive and positive step. You could go further if you like. We would obviously be pleased to see it extend beyond this to include all wages and benefits that are currently owed to an employee, rather than have it capped.

Mr Blakeley: There are two areas that we considered including in the brief. One is the fact that there is no provision for indexing on the \$5,000 amount. I understand that

will probably be contained in other briefs from labour organizations and we chose not to include it in ours, but it is definitely an area of some concern; \$5,000 may seem like an appropriate amount in 1991, but in 2001 if it is still \$5,000 we have defeated the purpose of the legislation.

Mr Stokes: Yes. While it has not been included, we could support indexing.

Mr Blakeley: The other area concerns the lack of a specific funding mechanism other than general revenue. I think to a certain extent that makes sense in that you do not want to impose a taxation on the good employers in the province, but problems as far as financing is concerned might develop over the long term.

\$20

Ms S. Murdock: I just want to make a comment, because when I was Shelley Martel's constituency assistant in the Garson Manor situation arose, actually for the first time. The thing about this piece of legislation is that in the Garson situation, while it is in receivership or whenever it is put in, because it has been in it a couple of times, the worker under this legislation would still be eligible to receive benefits if that came to pass, regardless of whether some mechanism was put in place to keep the thing alive. The worker does not suffer.

I know that too many times they get their cheques and when they go and cash them at their local grocery store, because Garson is a small community and you do not have to go to the bank, as you do down here. Then it would bounce, and yet these were employers at the time who were funded by the provincial government and were getting good dollars, and yet were not paying them out to where they belonged. I am glad to see you used that one as an example, because it is definitely a timely one.

Mr Blakeley: Certainly a key feature of the legislation as well is that there does not have to be a termination of the business before benefit entitlement arises. If you get a \$10 cheque you can file a complaint with the ministry and hopefully it will be made good.

Ms S. Murdock: I just have one question. I know the deputy minister said on Monday that the average wages, vacation, termination and severance pay would amount to about \$4,300. I know you said you would like a COLA on the amount, the \$5,000 and so on, but would the \$5,000 cover most of your employees?

Mr Stokes: Probably in those work situations. Because they are critically underpaid, I would imagine the \$5,000 would cover it under today's situation.

Mr Offer: I have just a few questions. They deal with the legislation as originally introduced by the minister, and I think you have alluded to that on page 5 of your brief in terms of quotations. I am wondering if you can share with me your reaction to the amendments which were subsequently introduced, those amendments which, for instance, took away the liability of officers and restricted the liability of directors of those companies that in some cases went bankrupt. I am wondering if you could share with us whether you feel those amendments enhance the principle

of workers being assured they will receive payment for their labours, as you said on page 5.

Mr Stokes: I do not know whether "enhance" is the right word. I think it restricted the liability to those who are appropriately responsible for it. I do not think the intent of the legislation was ever to penalize volunteer directors.

Mr Offer: I was not alluding to the volunteers. I would just like to get your thoughts as to whether, in your opinion, those amendments should or should not have been introduced.

Mr Stokes: We do not have any problem with the amendments, if that is what you are asking.

Mr Offer: I would like to get your thoughts, because certainly that has been the subject of some discussion as we have gone through these hearings.

Mr Blakeley: I think the amendments were introduced for a couple of reasons. The amendment regarding the directors' restrictions, as I understand it, now brings those restrictions in line with the restrictions set out in the Ontario Business Corporations Act, which is obviously the appropriate place to be defining a director's responsibilities and liabilities in a corporation. If you then start turning around and using other pieces of legislation to achieve goals which are addressed in separate legislation, I think you would be running into a problem.

We were at a meeting this afternoon where we were discussing regulations for health care workers and trying to achieve goals that are properly contained in the Mental Health Act. People were trying to use the legislation to achieve goals that are not what the legislation is trying to do.

I think in that case it did not reduce anybody's liabilities. It clarified that the liabilities were the same as the ones in the Business Corporations Act.

Mr Offer: I guess the question is not so much the liabilities, which basically are the same; it is the enforcement procedure which is different under this bill than under the Business Corporations Act. I just wanted to bring this point up because you were so very strong and clear in your presentation in terms of the workers being assured they will receive payment. It harks back to the April 11 introduction of the legislation, which was of course amended and which seems to fly in the face of the principle.

Mr Blakeley: In response to that, the workers, as they stand now, do not have a lot of protection. If somebody closes up shop and disappears, there is no guarantee they will receive any form of monetary compensation. What this legislation proposes is that the government will go on the hook, if you will, for \$5,000, and then the government will have to recover the money. So if the government then has a problem getting the money back because it does not have anybody to go after, that does not lessen the value of this legislation to an individual who is out cash.

From what we have looked at, the way to guarantee the workers will receive their pay from their employer would be to amend the federal bankruptcy law—not the way it has been introduced, which is the token \$2,000 with another taxation program, but to put unpaid wages, vacation entitlements, severance entitlements, ahead of secure creditors.

Why should a bank go in and be able to reclaim money that it made a mistake lending, let's say? Let's take a bad case. Let's say they gave money to somebody who had a bad business idea. This person went out and employed people and went bankrupt. Why should the bank, which had knowledge of this business, had a chance to look at the prospectus, at the business plan, and to evaluate the people who were coming to it for money, have a greater claim to the money than the employees who said, "I'd rather be working than be unemployed, so I'll go down and I'll cast my lot with this person who is hiring"?

Mr Offer: Yes, I recognize your opinions on the Bankruptcy Act. We have heard this, obviously, and it is unfortunate we do not have any jurisdiction over that. Just carrying it forward, is it your position that there is some social responsibility of the taxpayers of the province to in effect guarantee the termination and severance pay of potentially every worker of this province up to whatever limit is in the legislation?

Mr Blakeley: I think what we see in this legislation is a willingness of the province, or of the current government, to assume that role, to say that in Ontario people who work for a living and who are denied earned income deserve the protection of the government to the amount of \$5,000, as it now stands, and that the government will take the responsibility of seeking redress for that. I think that is an appropriate policy.

Mrs Witmer: We have heard from different people during the past four days and certainly we hear from most of the union members that they are very supportive of this legislation, that it will certainly help their members to recover unpaid wages and the other moneys owed. Yet we have heard from business people, employers, that this is definitely going to have an impact on the economy in Ontario because it has created uncertainty, that there are individuals who will not invest more money in this economy and individuals who are looking to move to other jurisdictions, whether it be the United States or Quebec or what have you. What does your membership feel about this, the fact that the possibility of getting a job in the future could be lessened because of this type of legislation, which the employers definitely do fear and will mean an added cost to doing business in this province?

Mr Stokes: First, the protection would be extended to all workers, not just our members. The majority of workers in the province are non-union.

Mrs Witmer: Okay. The only reason I say that is because most of the people who have appeared here have represented the unions.

Mr Stokes: Our interests extend beyond our own membership to all workers in general and the protection that should be extended to them. The issue of the impact on the business community, I think, is a red herring. I do not think businesses will leave this jurisdiction because of this piece of legislation. If they are going to leave, they are going to leave for other reasons. I do not think it is going to pre-empt anyone from investing in the province as well. I think this is a good province. It could be a successful

province for business. I do not see why it has to exclude rights for workers at the same time.

Mr Blakeley: Another concern we have is that we do not see how it is a new cost of doing business. There is no specific taxation.

Mrs Witmer: There is the increased cost of purchasing directors' liability insurance, if you can get the insurance.

Mr Blakeley: But our understanding is that those liabilities are currently in existence under the Business Corporations Act.

Mrs Witmer: No. According to this legislation there are some changes that will have an impact. I guess I hear you saying that you do not feel it is going to cost this province jobs.

Mr Blakeley: No, I do not think it will. Basically the legislation provides an avenue for some compensation for people who happen to get in with a bad lot, as far as employers go, or an employer who comes across some unforeseen circumstance. Generally I think employers set up business to earn a living and recognize that paying their employees is part of the cost of doing business.

I will defer on the question of liability insurance. I assume you will hear from numerous other witnesses who will address that issue. Our understanding was that it is in line with the current liabilities.

Mrs Witmer: Actually, we have heard from people that there is a great deal of difficulty in getting liability insurance and that it does increase the cost of doing business. Certainly this bill will have a severe impact.

Mr Blakeley: That was certainly a significant part of the discussions during the legislation when they reviewed that. It may increase the cost of doing business in that area, but I do not think it is going to drive businesses out.

Mrs Witmer: I definitely feel that in this province there is a need for greater consultation with all people. I think we are seeing polarization on this issue and some of the other upcoming labour legislation. What suggestions would you have for bringing together all the people who are going to be impacted by this type of legislation so that, when legislation such as this is brought forward, we do not have the problem that was created with Bill 70, where I had to be seriously amended? What suggestions do you have so that we could work more closely together?

Mr Stokes: That is an interesting question. The fact of the matter is that this is the first time the labour movement has had an equal opportunity for consultation in any of the processes that existed. I guess I am not surprised it is the first time I have heard these types of questions come forward. What about broadening the consultation process? Quite frankly, we were shut out of the consultation process. We think the consultation process that exists now is much broader than the one that existed before.

Mrs Witmer: Okay, so I hear you saying this is the first time you feel that you have been consulted.

Mr Stokes: Not on this piece of legislation. The first time the labour movement has been consulted in real, genuine terms was since October 1990.

Mrs Witmer: I appreciate that.

Ms S. Murdock: On a point of order, Mr Chair: Mrs Witmer just made that the liabilities of the directors. I think it is a misunderstanding that the Ontario Business Corporations Act and this legislation would differ. They do not. They are the same. I have asked the ministry people to do a chart of the three different areas because I think a lot of us are getting confused as to what is and is not in it with the amendments that were announced on June 5. There is no difference between the liabilities of the directors under OBCA and this.

Mr Offer: The procedure for enforcement.

Ms S. Murdock: The procedure for enforcement is different but the liabilities are not different.

Mrs Witmer: It is very different, and I think that is important and significant.

Mr Offer: The working mechanism is clearly one that is having some concern.

Ms S. Murdock: I will agree that the enforcement mechanism is different, but the liability is not different. I just wanted to say that.

The Vice-Chair: Time has expired and I thank you for your presentation.

Is there anyone here from the North Shore Loggers Association? No? I think we are going to end up having to take a recess for 10 minutes while we wait for the next group, which will be the Canadian Bar Association—Ontario.

The committee recessed at 1535.

1548

CANADIAN BAR ASSOCIATION—ONTARIO

The Vice-Chair: Would the committee to come back to order. Our next presenter is the Canadian Bar Association—Ontario. Please come forward. The bar association has given us two briefs. One I believe is pre-dated to the proposed amendments and then there is a current one. I ask that you identify yourselves and introduce yourselves for Hansard.

Mr Manning: My name is Garth Manning. I am the president of the Canadian Bar Association—Ontario. We represent something in excess of 16,000 members. I am merely going to set the scene for no more than two minutes. The main submission will be made by my colleague, Daniel Dowdall, and then will be taken by my other colleague, John Swan.

Setting the scene, you are quite right; there are two submissions. The first one is the submission my association made when Bill 70 was originally introduced. We will all recall that the original bill attracted some attention—I think that would be an understatement—and was subsequently amended by the minister. We have given you our original submission because our up-to-date submission, the one with three names on the front, brings our submission up to date and takes into account the changes the minister announced, although some of the material in our original submission is still germane today.

I would like to emphasize that the association is non-political in nature. We are not equipped to, we do not want to and we do not in fact comment on political matters. We are knowledgeable in submitting briefs to all areas

of government. We have done so on many occasions. Our aims are primarily in the public interest, and second so that any proposed legislation is written in clear terms which are incapable of being misconstrued.

With that brief introduction and setting the background, I will leave the actual submission to Dan Dowdall and John Swan.

Mr Dowdall: We are going to divide this presentation up between John and me. I am going to talk about certain concerns we have with respect to the payment plan itself and the implications of that and some continued concerns we have with respect to director liability. John will be addressing you with respect to concerns we have about the procedural elements of the proposed bill.

Dealing first of all with the question of the payment plan, and this of course is the proposal that a fund be established and people can make claims against the fund, I think in a nutshell the concern I can express in that respect is really one with respect to the failure of the bill to take into consideration the issue of mitigation. As lawyers, one of the fundamental issues we deal with in terms of the recoupment of loss to individuals is the question of whether or not they have been able to successfully take action so as to lessen the loss. The concern we have with the bill is that it has not taken into consideration the fact that employees who are displaced as a result of termination may have been able to take effective steps to lessen their loss.

My particular background in being here today is as a fairly rare breed of insolvency lawyer. I am a fairly busy person, unfortunately, these days. Very often in my practice, for instance, we see situations where companies fail and the corporation dies but the business continues. In many ways, receivership is a fairly effective way of restructuring a business so that the useful parts of the business go on and get purchased by a new purchaser, who continues and employs the employees and the failing parts of the business get liquidated and discontinued.

There seems to be a public misconception that somehow or other receivership or bankruptcy leads to a mechanism whereby the table gets purchased by Mr A, who carts it off in one direction, the machine over here goes off to Mr B, Miss C picks up some other machine and it is all just disbanded. In reality, what happens in receivership and bankruptcy, in the vast majority of situations, is that the functioning parts of the business are purchased and the employees who are associated with that are re-employed.

To put that in the context of Bill 70, what is happening here is that there are purchasers buying businesses and re-employing individuals, and those purchasers are, under the Employment Standards Act, successor employers. Under the Employment Standards Act, the employees have the same rights with respect to severance pay and the same rights with respect to termination pay from that purchaser as they would have in the situation they had previously left. So we are in a situation where they really have not suffered a loss.

Perhaps the best way of showing this might be an example. A company goes into receivership. It had 70 employees; 50 of these employees are re-employed by a purchaser; 20 of these people are terminated. Clearly the

people who are terminated are in a different situation from the people who are re-employed. Let's take the position of one of these individuals who becomes re-employed. The employer decides to terminate that individual three weeks or three months into his new employment. At that time, the new purchaser would, under the existing legislation, be responsible. The purchaser, not the public purse, would be responsible to pay that person based on the seniority rights he had accumulated in the predecessor business, both termination and severance pay, according to the statute. We do not see that there necessarily is a loss in that situation.

The question that arises is, why is this bill proposing to compensate this person and allow this person to make a claim against the fund, which I think, when all is said and done, and notwithstanding the efforts that may be directed to recoup some expense from the directors, is ultimately going to largely come out of the public purse?

I am saying the same thing with respect to both termination and severance pay and, to a lesser degree, with respect to vacation pay. Certainly with many of the receiverships and bankruptcies I have been involved in, when the employees are in fact rehired the purchaser, as a matter of goodwill, just gives the employees the same vacation routine and the same pay package and so forth that they routinely had.

That is not to say everybody is going to come out fine in this situation, but I think what we have to do in looking at this bill is to determine where there really is a loss happening. It would be a very unfair situation, for instance, in one of these situations where there is continued employment, for a person to walk up, get a \$5,000 cheque from the government and have all the termination and severance pay rights he already has from a new purchaser. There would be some reduction, I believe, if they were then fired by the new purchaser, but what we are doing is really giving the new purchaser a kind of windfall in the sense that he now has employees to whom he owes less obligations than he would in another situation. When the choice is between the new purchaser taking on an obligation, which he has been taking on for years, and being relieved of that obligation at the public purse, it does not make a lot of sense to us.

That is the main thrust of the provisions, which are set out in more detail under the section dealing with the payment plan.

The second issue that comes out of the plan is the whole question of the fact that the fund itself is likely—I underline the word “likely” because we are going to have to give time to see what happens—going to displace what has really become a fairly entrenched practice in the insolvency community of the banks going in at the commencement of a receivership and paying money, paying the outstanding payroll amounts, especially in light of the fact that the bill seems to suggest, although it is not very clear on this, that the banks will not be able to pay the employee and take an assignment of the employee's claim, which is the practice, for instance, in the United Kingdom.

Today sees the bank go in, appoint a receiver and fund the last payroll that has not been made, so that the employees get the payroll money, which is the money they really are relying on. None of these people is banking on his vacation pay, banking on termination and severance pay. They are not expecting those payments. What they are

expecting is their payroll cheque. That cheque now gets honoured by the bank. It almost always gets honoured gratuitously. The bank adds that to its security and tries to get it out of the assets, but the bottom line is that if the bank comes up short, it eats that amount. That payment is happening immediately and it is being made by the bank.

Our view is that what is going to happen is a situation under this fund system, especially if there is to be no assignment to the bank, where the bank is not going to make that payment, the employee is not going to get the payroll cheque he has counted on and the bank's recovery is going to be enhanced out of the public purse.

The reason I speak to this issue is that as a bankruptcy lawyer—I said a rare breed, and there really are very few of us—we have obviously been dominated—I think the entire time I have been at the bar we have been talking about our new Bankruptcy Act, which got introduced—at least part of what we hoped for got introduced in the last few weeks. One of the reasons, as I have understood it as a bankruptcy practitioner, that the last decade of delay in bankruptcy has been about is precisely this issue, the contentious nature the government has had about how to deal with the employees and the question about whether it ought to treat the employees as having a supersecurity position against the assets or whether it ought to set up a fund and how to fund the fund. Of course, they have opted as we have seen from the recent amendments, for the fund option, but they are doing it really on the basis of some tax on employers rather than out of the public purse per se.

I think this is an area we really have to sit down and think about. At the very least, I think we owe the banking/commercial insolvency end of our world the duty to make the government's position on this clear. If there are not going to be assignments, we should say it. If you look at the wage legislation that came in with the bankruptcy amendments, they came right out and said, “You can't assign.” do not know that I agree with that. I think that is not a good policy actually, because I think it is just going to delay payment to the employees. The banks are going to have a perfect excuse not to make the payments they have been making all along. They are going to say, “Go see the government.” There the fund is well known. So you are letting the banks off the hook.

I think it is my duty here to come and tell you that. I am wearing sort of a double hat. Because we are all tax payers here, I am not sure that is the best way I want to see the money go. Again, that is a political decision.

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The third element I wanted to come and speak to you about on this plan is how the fund is going to impact on restructuring. I talked about insolvency lawyers being fairly rare. Those of us who have a substantial portion of our practice working with troubled companies, as I do, are an even rarer breed. I have had to deal in my practice with the whole question of how it is that some of these issues impact on restructuring.

Traditionally, when you have a company that is in trouble, typically management does not recognize that problem very quickly. Hindsight is wonderful, and you say, “Gee, should have recognized that.” But the reality is that the

managers, just like any other human beings, are able to kid themselves about their problem. The result of all this is that by the time the companies end up in a restructuring mode and they are in my office or whatever, they do not have any real extra cash to throw around. You look at a company and you say: "Look, you can't make money making widgets and it's dragging down the rest of your business where you are successful. The answer here is that regrettably, because you can't make money doing it, you have to shut down part of the business. But let's save this other part over here."

The problem is you are in a catch-22 situation, because the present legislation says that if you are going to lay people off, you have to make extraordinary payments to them. The problem you have there is that you just do not have any money. You have got all the credit you can have. You are usually on COD with your suppliers. If you stop taking goods in from your suppliers, you do not have material to put through your plant and you might as well shut down the whole plant. You cannot borrow any more money at the bank. The businessman has probably mortgaged his house and injected money into the business. He is at this situation where he has these obligations to make and he cannot come up with the cash.

Under the present regime we have, you are able to go to the employees and you are able to just tell them the facts of life, call in the guy from the union, call in the employees and say, "Look, let's make a deal." The reason is because they know that in the present priority regime, if you go bankrupt they are not going to get anything for termination and severance pay. That is the sad reality of where we are at.

I think all of us in this situation would like to see some form of bankruptcy reform where employees' rights have a higher priority than they already have. In our original submission what we said was that this should all be part of bankruptcy reform. Regrettably it looks like it has been shoved off to phase 2 of bankruptcy reform, which for all I know may be another 26 years away, just like phase 1 was.

In any event, the problem you have here is that you get into a tension situation between sustaining the business, which means the employment for the individuals who are going to continue, versus the making of the payments to the individuals who are being dismissed. There is a tension in the rights. With the next act and the new fund that would be here, it is going to be a lot tougher to make these kind of deals, because the dismissed employees are really going to say: "I want to insist on a minimum cash payment that I can go get from the fund. There is nothing left for me in this business."

The point we want to point out for you, so that in making your decisions and recommendations you can at least focus on it and make a decision on it, is that there is a balancing here. The fund is creating a situation where the rights of continuing employees are being put in tension with the aspirations of the terminating employees and the result of all this might be that—you have got a company that has no cash. We would like it to have cash and we would like it to not be in trouble, but the reality is it does not have cash and it cannot make the payments, and what I am afraid we are going to see are situations where the

deals we have been able to make in the past are not going to be happening.

One of the recommendations we make is that there should be incentives in the plan to turn to people and say, "Look, if you the employees had a reasonable deal on the table from the employers and you just turned it down because you were going to come here and get cash out of the public till," they should perhaps have some question mark in their mind at the time they are refusing to make a deal as to whether or not they really are going to qualify for compensation.

On to the question of directors' liability. First of all, I should say with a lot of sincerity, as one of the people who screamed and yelled perhaps most about the previous bill, that I am very gratified by the fact that there was a response to the concerns that were expressed about the extent of directors' liability and officers' liability in the area. To me, directors and officers are not mythical people. They are the guys who come into my office and sit in the chair across in my office and they are very scared individuals who are sitting there saying: "Are they really going to take my house? Am I really going to lose my car?"

Ironically, there is a tension here, because these same directors and officers who seem, when you are dealing in a legislative context, to be faceless moguls are really human beings like you and I, and they are very terrified by the concept of losing everything they have as a result of director liability concerns.

I can tell you a true story. I have a client I am working with. It is a company here with a lot of employees. It was one of the most democratically run companies I ever had. I remember I asked the client, "Who is the president?" He said, "Oh, we elect that from the employees every year." He was in my office because he was concerned about his liability to the bank, which was \$100,000. This was right at the height before the government had withdrawn the last part of Bill 70, and I almost had to restrain myself from laughing. I told him his Bill 70 liability with this many employees—this was back when we had termination and severance pay obligations in the amendment—was more like \$500,000. The man got up out of his chair and started walking towards the door saying, "I'm going to go shut the plant."

That is the kind of reaction. I had to physically get out of my chair and say, "No, we'll work this out." We calmed him down, but the point is to convey to you the seriousness with which these individuals regard this. If you take a 55-year-old man, who may be a director of a company, and tell him he is going to be wiped out because of liability to employees—he has come into my office to try and find ways to stay in business, because the businessman's first objective is to meet the payroll. It is not because he is an altruist. It is because if he does not make the payroll, the employees go home and he is out of business. He has nothing more to fight for. He is on the hook for his guarantee to the bank. He is out of business. He has lost his investment in the business. For perfectly selfish reasons, his primary objective in business is to make the payroll, and that is the number one thing that dominates a businessman's objective when he is in trouble.

The Vice-Chair: I am going to interject to warn you that you are about halfway through your brief but you are three quarters of the way through the time allotted.

Mr Dowdall: I will speed it up. In insolvency situations, when you look at what does not get paid, it is the things that directors do not have control over. They are what I call the stub-end issues. You are always paying payroll in arrears. You never pay vacation pay, or very rarely in very few businesses. You do not pay vacation pay; the boys take their vacation. There is never this act of saying, "We're not going to make the payroll." What happens is that there is a constant struggle to make the payroll and then it suddenly just does not happen because you run out of cash, because the bank appoints a receiver, because you get petitioned into bankruptcy. The directors are being held personally liable for something which in reality they have no control over, and that I think is unfair.

In our proposal, we are saying that the way to deal with this is to introduce a due diligence defence. In fact, we are making the radical proposal that there should be actually less liability than there is under the existing corporations statute, and explain in here why it is that there has not been a tremendous outcry about the existing corporations statute liability. The reason for that is because up until two years ago, and over the last two years, it has not been a practical problem. But a combination of Supreme Court of Canada rulings which have wiped out in certain cases the deemed trust for vacation pay, and this payment fund, which is now going to stop the bank's gratuitous payment, which benefited the directors in the past—two years ago, when the director came into my office, we did not talk much about being worried about the employees because we knew they were going to get paid, and we have gone to the situation now where they are going to get dinged.

They are caught in this impossible situation. Their options are, do you rape the company, do you take the little bit of cash you have and maybe continue the business, continue the employment, or do you grab it all, throw it into some bank account, cut people a bunch of cheques, and then terminate them all? We have had this. I have had businesses, clients, which could have continued but have not continued because to do so would have been to expose the directors to these kinds of liabilities. So I think there is a counterproductive element to this thing as well.

John is going to talk about some procedural aspects that we find troublesome, and then I guess we will have some time for questions.

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Mr Swan: I will be very brief. The Employment Standards Act has always taken the position, and it is well-known to be very effective, of making sure that employees get current wages. A call to the Department of Labour will very often make sure the employee is paid very promptly. It is a very proper threat to make sure the employees have money to buy their groceries.

What we are concerned about is the transfer of that very summary procedure to determine the liability of directors under the legislation. We would suggest that rather than using a means to reimburse the compensation fund,

which is designed to protect employees for their weekly paycheque, that method be replaced by the ordinary method by which any debtor is made liable to pay a creditor; that is, an ordinary action started in the courts in which the ordinary defences are available. We do not see, for example, when the purpose of the payment is not to fund employees immediately, that the summary procedure of having a director's liability determined by an employment standards officer should be adopted.

The second point is that we do not see the need for what we can point out is a rather savage fine of \$50,000 for failure to comply with an order of the employment standards officer. That failure to comply could arise if there was a failure to pay in accordance with the order. While there are some procedural safeguards for the director who seeks to have the order reviewed, it seems to us to be overkill to suggest that in addition to being made liable for the amount of the wages he should be liable for, there is the risk of a fine.

In our brief, we point out what we understood was the origin of that particular provision, but if the provision is intended only to get those who have, for example, absconded from the jurisdiction and taken the company's kitty with them, then perhaps it should be limited to that and should not be used as something in terrorism. We point out as well that if a director is facing his or her own personal bankruptcy, a fine is not discharged on bankruptcy, and that looks a bit vindictive, that the person cannot avoid the liability for non-payment even by going bankrupt.

The Vice-Chair: We will start our questions with Mr Offer. We have time for only one question each.

Mr Offer: I have one question in two parts. People have come before the committee and spoken about the provision in the bill that the branch does not have to exhaust all its remedies against the employer before proceeding against the director. Can you share your thoughts with us on that provision? Second, the due diligence provision is one thing, which I think was in your earlier brief. To be clear, does that mean there should be a right for a director to argue before someone that his or her liability should be mitigated, reduced or whatever?

Mr Dowdall: To exhaust all its remedies: The present Corporations Act provides that there is an obligation to take certain steps to recover from the corporation. I think we should never get away from the view that director liability should be secondary. The assets of the corporation should be what pays people out. The problem we are confronted with is certain constitutional and legislative problems in trying to create the appropriate priorities. The problem is that the province has in some ways tried to create the appropriate priorities only to be defeated as a result of certain decisions of the Supreme Court of Canada and the bankruptcy amendments are not going to help us at all with that, that I can see.

Mr Swan: On the due diligence, the model we would recommend is something like the Income Tax Act. There would be a number of decisions under that which indicate the standard of care that the director has to establish, and it is pretty high. It means that the director who, for example,

takes all reasonable precautions to make sure vacation pay is accrued, let's say, is put aside into the kitty, is protected for somebody whom he cannot control takes off with it or pays it improperly. The cases on the Income Tax Act are a useful source of information on that.

Mrs Witmer: I appreciate your presentation today and the former one. It certainly gave many of us a great deal of information. What advice would you have for the province, now that the federal government has introduced legislation, on harmonization of the two plans?

Mr Dowdall: I think it is going to be a real problem. It is going to take a lot of discussion, not only because you are both trying to do the same thing in one area but especially because you are trying to do different things. The province is trying to compensate for more dollars absolutely and also for different things. I am not sure: If you make your claim to the federal fund and you get \$2,000, what does that cover? It also comes bouncing back even to the directors, and it has significant enforcement issues for the directors, because the subrogation issues and enforcement issues at the federal level are very different from those in the province. I do not have a complete answer for you. I think it is a real hornet's nest.

Mrs Witmer: I guess I hear you saying that there certainly needs to be more investigation.

Mr Dowdall: Exactly.

Mr Swan: The difficulty is that the feds have unclouded jurisdiction overall under their Bankruptcy Act. I think it almost puts the responsibility on the province to find some way in which its goals can be achieved within that overall umbrella, because if it comes to a dispute, as happened with the statutory trusts, the federal legislation will prevail. There is nothing we can do about that except to work within that framework to achieve, for the province, its goals, whatever they may be.

The Vice-Chair: I am going to have to—

Mrs Witmer: Just one comment: We have certainly had some people indicate that the province should not be passing that bill until that process has been completely worked out.

The Vice-Chair: You are getting as good as Mr Offer at sneaking something in.

Mrs Witmer: That is good. I have tried for four days.

Mr Owens: Mr Dowdall, you mentioned the concept of a reasonable deal being worked out. How would you define a reasonable deal? What time frames would you attach to that reasonable deal, and who then would you say would be responsible for the wages that would have been paid during that period of the reasonable deal being worked out?

Mr Dowdall: The issue for the reasonable deal is that the topic, the subject matter of the so-called reasonable deal, is termination and severance pay. I am not saying that some employer ought to be able to come and say, "I'll pay your wages six weeks from now." We are dealing with matters which really are what I call extraordinary payments in the sense that they are not made in the ordinary course. Businessmen do not want to be in a position where

they are laying off employees. They would rather be growing and hiring more people, thanks very much.

The reasonable deal is really defined by the circumstances of the company and the cash flow needs of the company. It is very difficult. This is largely what I do on the debtor side of my practice. We try to figure out what we need to make the business run within reasonable parameters so it is not going to be in constant crisis, and then devote excess cash flow to making extraordinary payments, like trade suppliers the debtor company has accumulated amounts owing to. We try to get the debtor company on payment plans it can make, and the same thing with the employee package.

The Vice-Chair: Thank you for your presentation. It has been something different. You are the first people to come with your point of view from your perspective, and we will be definitely taking that into consideration.

STUDENT UNION OF LAKEHEAD UNIVERSITY

The Vice-Chair: Our next presenter is the Student Union of Lakehead University, Mr Middleton. At your leisure, sir.

Mr Middleton: Thank you for this opportunity to address the committee. My name is Ian Middleton. I am the president of the student association at Lakehead University, and I represent both graduate and undergraduate students as well as full- and part-time, approximately 7,000. Lakehead University is situated in Thunder Bay.

Our student union is a non-profit organization. It is democratically based. Its mandate is service-oriented, which means we run services for our students. We are also a politically motivated organization, so we do more than just run businesses. We also lobby the government, we also run campaigns and we also try to promote social awareness and social consciousness within our community at the university and within the community of Thunder Bay.

There are a few issues in the bill I would like to talk about. But first I will give you a little bit more background on our organization. We have eight full-time employees; we also employed about 120 part-time positions throughout the academic year. We are fairly large. We have revenues in excess of \$1 million, which may seem a little surprising for a student association, but it is one of the smaller ones in the actual province. We have a varied operation: we have everything from a women's issues co-ordinator to an ombudsperson to student security service as well as a pub.

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On a first reading of Bill 70 I was fairly concerned with the liability for board of directors of not-for-profit organizations and I was pleased to see the amendments come out, which eliminated the enhanced liability. Nevertheless, under the current acts we still face a fair deal of liability. As an organization that elects its board of directors as well as its executive officers through general elections, I feel this could hurt the democratic process at our institution.

If, for instance, you as MPPs were to face the same liability that members of our association had to face, I do not know how many people would actually run for a position. Our members of our board do not necessarily have much to do with the business operations of our organization.

Perhaps that is a fault within our own organization. Nevertheless we would like to have as much participation by students in our group as possible, and that means those who are not as economically advantaged as others and who do not have the fiscal resources available to them that others do. For instance, our institution has the highest percentage of students on assistance in the province, and we would feel that if they were aware of their liability currently, we might not have anybody sitting on our board. I was rather shocked to find out what my liability was when I was going through the bill.

On other issues with the bill, although I am not as well versed in it as the bar association, I think it is nevertheless fairly good. Employees need to be protected, especially those in northern Ontario, where we have a boom-and-bust cycle in communities. I think a situation can occur where they do not have the kind of protection they might have if they were in other parts of the province. Perhaps the \$5,000 is a little bit low. I think there could be room for improvement there. I think the enforcement policies seem to be fairly good.

Finally it seems that the existing legislation is merely being enforced by this bill, and I think if you have legislation, it is there for a reason and it should be enforced. Attaching a fine to non-payment is putting teeth into the legislation. This is a fairly short presentation; I apologize for not having anything written but, due to the Ontario Federation of Students, we are having my brief translated. It is a bilingual organization, so any documents we send out have to be translated. I apologize for that. I would like to thank the committee for this opportunity to come and address you, and if anybody has any questions, please shoot.

The Vice-Chair: I thank you for this part of your presentation, and do not ever feel that you have to have a written brief to come before a committee of the Legislature. That is not what we are about. We know that it is not always easy for people. If you are up to questions, this time I believe we start with Mrs Witmer.

Mrs Witmer: I really appreciate your taking the time to come and share that information with us. I think most of us had overlooked the fact that it does have an impact on students. Have you discussed this widely with the other students?

Mr Middleton: There is a provincial organization, the Ontario Federation of Students, which represents every university in the province except for Wilfrid Laurier University. We have had discussions with them and through their network we have discussed it with a number of other student associations, yes. There is a great deal of concern. There are two student associations that are in a little bit of financial difficulty. We are fairly fortunate that we have a stable base of income through our student fees, but other student associations rely on incomes from their business operations and some of those are not doing so well. The University of Waterloo, for instance: one of their pubs lost over \$100,000 last year. The students' association at the University of Windsor is \$500,000 in debt. So there are some associations that are in trouble. Ours went bankrupt in 1972.

We were the Alma Mater Society at Lakehead University and we went bankrupt and changed to the student union.

Mrs Witmer: Representing two of those in Waterloo that you have spoken about, what suggestion would you have for this government as far as this bill is concerned and how it impacts on the universities?

Mr Middleton: I think that perhaps it is not the actual Bill 70 that is the problem but the existing liability under the Ontario Corporations Act that poses the biggest problem. Considering that there are organizations that are in trouble I think that Bill 70 does help alleviate perhaps some of the concerns that those employees might have if their associations do go under. And the federation of students at the University of Waterloo is quite large and has a great number of employees, so they have a legitimate concern.

Mrs Witmer: I really appreciate your coming and speaking to us.

Ms S. Murdock: I have not got any questions but thank you very much for coming. I know it was a long haul.

Mr Middleton: I did not walk.

Ms S. Murdock: Coming from Sudbury I can identify and I am not as far as you by any stretch but I am just wondering—maybe I misunderstood you. I did not have a question but now I do. At the beginning of your presentation I understood that your concern was for the directors' liability, and then you have changed completely, support the \$50,000 fine, the enforcement provisions that Bill 70 provides over the present ESA, and the \$5,000 is good but it could be better.

Mr Middleton: Perhaps I did not make myself clear. I was worried about the section that deals with not-for-profit organizations, because we are substantially different than the usual business in the sense that we have volunteer directors; none of our directors are reimbursed. So I have a concern in the sections that deal with not-for-profit, but not in the other section that deals with the other.

Ms S. Murdock: All right. So that the amendment that were announced on June 5 by the minister probably pleased you.

Mr Middleton: They did a great deal.

The Vice-Chair: So we can move on from your non-question?

Ms S. Murdock: Yes, from my non-question. Yes, you may.

Mr Ramsay: Ms Murdock's non-question kind of answered mine, so that is all right.

The Vice-Chair: We do have a minute or two so if anyone has a question.

Mr Offer: I have a supplementary to those two non-questions. What type of corporation do you have? Are you incorporated?

Mr Middleton: Yes, we are.

Mr Offer: Is it a non-profit organization?

Mr Middleton: Yes.

Mr Offer: I just wanted to be clear that you are now outside. Is the presentation you are making here today your presentation or is this also from the students' federation?

think it is very important that the committee really does get the sense from young people on campuses of this particular bill and how it will affect them, especially because of the fact that we are not travelling. I am sure you know that and I am sure you know why. But is this a presentation which we could take as one from the federation?

Mr Middleton: I will give you the background on how I came to be here. I was contacted by a constituency office in Thunder Bay which mentioned that this might impact our organization. Shelley Wark-Martyn's constituency office telephoned the student union and said this process was going on and you might have concerns because there are things directly affecting not-for-profit organizations. So I got the information from the Ministry of Labour. Then I contacted the Ontario Federation of Students and had them do some fieldwork in the province, talking to other student associations. I had meetings with them yesterday and today and we worked out our presentation. So I do have association with the Ontario Federation of Students, which, as I mentioned earlier, represents all student associations except for Wilfrid Laurier.

Mr Offer: I am glad you were able to come because we just received word from the clerk that there was not a time slot available for almost 40% of the people that wanted to come before the committee. It is good that you were able to do so.

Mr Klopp: And support the bill the way you have.

The Vice-Chair: Let us put it this way. I am going to jump in right now, before we digress somewhat. I thank you very much for your presentation and for the points that you brought forward. It is very important to hear from the young people that are in college.

Mr Middleton: Thank you again.

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DAVID WILLIAMSON

The Vice-Chair: I would ask Mr Williamson, if he is present, to come forward for his presentation. At your leisure, sir, whenever you feel comfortable.

Mr Williamson: I am Rev Dr David Williamson, minister of Victoria Avenue United Church in Chatham. I come as a concerned individual, and come representing other friends in the church. I also come representing the local union of automotive workers, and the Chatham and District Labour Council, as well as the Office of Community and Economic Development in the city of Chatham. I do not have any brilliant critique, and I will not take too much of the committee's time today. I think my presence here today, my willingness to come in from holidays and fight the traffic, and even endure my mother's cooking tonight—

The Vice-Chair: You had it made until you said that.

Mr Williamson: Well, some days it is better than others.

The Vice-Chair: We are going to pass that on to your mother.

Mr Offer: Do you know something called Hansard?

Mr Williamson: She does not read it fortunately. I think probably my presence here today really is simply a statement of support and appreciation for the intention of

the legislation. On behalf of that group and our community, I agreed to come and simply say that we are very appreciative and supportive of the intent of the legislation, Bill 70, in particular, the amendments as well. Also, maybe you have heard the story but I am sure you have heard it in various forms. I need to take just a couple of minutes of the committee's time to tell the story of places like Chatham.

Chatham in Kent county in southwestern Ontario is an area which is hurting deeply. It is extremely unstable right now. The unemployment rate is certainly above the provincial average, varying anywhere between 12% and 13%. It is hard to tell exactly because we are lumped in with Essex and Lambton counties as well. It is an area which primarily moves around the agricultural industry and the automotive industry, which are both deeply in trouble right now. We have lost approximately, probably over, 1,800 jobs in the last year. We have seen Motor Wheel close just a week ago. We lost 550 jobs there. Elan tool and die closed, losing 165 jobs there. NHS Die Casting and WG Die Casting closed; that was 110 jobs there. There were major layoffs at Siemens of 183, Standard Tube of 140, Eaton Yale of 250, Navistar of 250, Woodbridge Foam of 140 and Hunt Wesson of 60. It is estimated, fairly accurately and recently, that about 156 have also been laid off as a result of those layoffs in small businesses in our community.

A recent survey done this spring by the department of economic development in the city of Chatham indicated that of manufacturing operations within the city having more than 10 people, 20% of the full-time jobs are now laid off, and it is anticipated in the near future that 30% of those full-time jobs will be laid off. Within the two major cities in Kent county, that is the city of Chatham and the city of Wallaceburg, there are just under 9,000 people presently listed as unemployed with the unemployment offices. As in so many communities, the general welfare assistance has tripled in the last year. The predominant feeling of the community right now is that those jobs will never return. The plants will certainly never raise their heads again in our community. It is a community which is very discouraged and, at best, unstable.

With respect to Bill 70, when I called a labour leader—perhaps the major labour leader in the city—for his comments on the bill, he said simply, "Something is better than nothing." Whether that is exactly right I do not know, but I have no brilliant critique of the legislation. Certainly something is better than the nothing which many of those 1,800 people are now getting.

It is appropriate and right that workers who have given many years to an industry and to an employer should be compensated clearly and easily and readily. That may be particularly true of places like Chatham whose history has been very stable. People who have worked, some for generations, for a particular employer, and have worked many, many years, find themselves with absolutely nothing.

I support the legislation because I believe that, in the climate of insecurity and instability in which we live, it may provide some element of stability. We live in an environment of rumour and devastating reality, and I believe Bill 70 will be helpful in providing at least some minimal

sense of security for those who anticipate that their wages may not continue into the future.

With respect to the directors' issue: For me, it is an issue of stability as well. At least there is clarity there. I know a lot of businesses now are struggling simply to find directors, and cannot find people willing to sit and act as directors in the company. Although it is a difficult issue, I think it will at least provide some element of clarity and stability.

I am here for these few minutes simply to tell you the story of Chatham and southwestern Ontario, and the manufacturing struggles there, to express, on behalf of many people there, their support and appreciation for the direction of the legislation, and to say that we look forward to its inclusion in the legal framework of our province.

The Vice-Chair: The floor is now open to questions. We will start with Ms Murdock this round.

Ms S. Murdock: You said you are a reverend and a doctor from the Victoria Avenue United Church?

Mr Williamson: That is right.

Ms S. Murdock: People have come to you and talked to you. I am wondering how many of those companies in the Chatham area have been able to pay their employees and how many have not. What is your experience with those people you have talked to regarding that?

Mr Williamson: I wish I had a really clear answer. I have been away or I would have got clearer answers. My understanding is, though, that some have and some have not. Firms like WG Castings have not been able to; they simply said, "We will not do it." As I interpret it, many people with whom I live and work—and I am talking about both agricultural and automotive people, and company presidents as well as people on the line—are terrified.

I do not know anybody who feels their job is secure. From the general manager of a major company to a Ph.D. research person in the automotive industry, everybody is just terrified, and grieving for so many people who have lost their jobs. Some have got some kind of compensation, sure. Some have struggled to get it. It has been modest.

Most people, even if they got some compensation, have no real sense of future. After 30 years, I mean, they only have a few bucks, what are they going to do? That is the best I can explain the whole mix.

Ms S. Murdock: I want to thank you for a point we probably have not raised often enough: that Bill 70 affects not only the line workers and the people who are out doing the jobs in the agricultural industry, but also the plant managers. Anybody who works and earns a wage is eligible under this legislation. So it is a good point.

Mr Williamson: We have a company that has lots of work, a good company, great track record, but struggling a little bit because of some complications. They cannot find anybody willing to be a director because of the tentative nature of the thing right now. It is a mess.

Ms S. Murdock: Despite the amendments to the directors' liability?

Mr Williamson: Well, they are not passed yet. Hopefully that will help. I think it will at least provide some clarity. I do not know.

Ms S. Murdock: Thank you very much for coming.

The Vice-Chair: We have a few more minutes if anyone else has any questions. I thank you very much for your presentation. It is unique. I believe you are the only person who has actually represented all the different sides of the community, and I thank you and your community for that.

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WORKERS' INFORMATION AND ACTION CENTRE OF TORONTO

The Vice-Chair: The next presenter scheduled is the Workers' Information and Action Centre of Toronto.

Mr Kidd: My name is David Kidd. I am from the Workers' Information and Action Centre in the city of Toronto. We are a newly planned unit in the city. Our mandate is to represent the interests of non-unionized workers, immigrant workers, workers of communities of colour and women workers in the city of Toronto.

We would like to record our support of the employee wage protection plan. In the last 15 years, there have been at least three commissions, including the 1985 Brown commission on bankruptcies and solvencies, that called for the establishment of such a fund.

The ongoing recession—some people feel that it is over but it is an ongoing recession—creates uncertainties for workers: more than 1,600 business bankruptcies in Ontario just till May this year; over 20,000 jobs lost in Ontario last year. It is difficult to lose a job. Workers need a support system in order to readjust to their changed circumstances. In Toronto, an education centre for workers who have been displaced has found that the average length of unemployment for workers—it has been 10 months before they find other employment. It is shorter in some other sectors and longer in others.

It is ironic that we use the word "support" when we talk about such things as a wage protection plan for layoffs and shutdowns. Workers do not receive their legal rights. This is one of the points we would like to make very clearly. Access to back wages, access to vacation pay, access to termination are legal rights that have already been established; severance pay as well. Yet often in discussions about this program, they are discussed as if they are frills. We support the intent of this program to guarantee and put into place a mechanism that will get for workers what is theirs in the first place.

As this bill has been presented and as the program has been suggested, businesses have used their associations and their access to the media to lobby against this bill. They feel it is unfair for businesses that are in difficulties to pay their workers what they are owed. Their lobby has been successful in pressuring much of the media to portray the proposed bill as too generous to workers and too onerous to employers during these hard times.

Their lobby has also seemingly convinced the federal government not to include payment even of vacation pay in the proposed new Bankruptcy Act. We urge that you maintain the program as proposed and in the future extend

better termination and severance payments as the Minister of Labour promised in May of this year.

We have a number of concerns, however. We would like to state at the start that the Employment Standards Act is one of them. For a number of years a number of different associations and workers' organizations have called for the Employment Standards Act to be looked at. We hope it will be amended and its mandate changed when the Ministry of Labour reviews the legislation under its jurisdiction this fall.

Currently it is based on a complaint-driven system. There is no place for regular industry-wide inspections, no place for proactive response to investigations or prosecutions. The system is based on individual complaints as opposed to group applications or even class actions. We suggest that class actions have to be included in legislation in the future to allow workers to pursue this avenue.

The system tends to deny access to large groups of workers. It requires prior knowledge of the system for people to interact with it and to utilize the resources that are available. It tends to deny access to new Canadians or marginal workers or those with limited literacy skills.

The majority of the workforce is non-unionized, and as such, when laid off, it does not often get appropriate information on how to deal with the issues that arise. These problems can be compounded when the system itself deals with workers as individual cases, as opposed to people or members of the community with the same issues or problems.

A more general concern we have about the particular proposal is the lack of resources that officers and workers in the employment standards branch have. We support the proposed 112.7% increase in the Ministry of Labour budget for 1991-92, with a significant portion of that increase going to this program. But it does not appear that the employment standards branch will get improved resources to process this program and amend other things that are under its responsibility.

There are many concerns about the branch. The staff is overworked. It is extremely difficult to get through on the phone at any time during the day. Reportedly, the staff frequently push workers to accept less than is their due in order to get case closures.

I am extremely familiar with the Lark Manufacturing case, which is before the courts now. The point I want to make here is how long it has taken in many instances for the branch to prosecute or even to act on behalf of workers. It has been almost three years now that they have been owed over half a million dollars in back wages, vacation pay and termination pay, and it took the employment standards branch almost a year to start proceedings against the Lark directors under section 60 of the act.

In general, the number of prosecutions have been low. Between 1979 and 1988 there were only 150 prosecutions, with only 77 convictions, while in the year 1987-88 alone, the branch received over 660,000 phone inquiries, heard over 12,000 complaints and investigated 18,000 complaints.

The branch needs resources to promote itself too. This is another concern. I can see that there has already been quite a response to this program to date. I believe there were 3,000 applications for the program as of June this year.

I just want to make a point about the workers who are our main concern. For these workers English is not their first language. They work many hours, and we are not talking about Sunday or weekend workers. Their regular day extends over 10 or 12 hours, because they may be forced to take a break in the middle of the day, and they do not get access to information about programs like this.

So the branch will need resources to promote itself. The branch needs more staff; in particular, staff with multi-lingual skills to ensure access to this program. Currently, for example, only one Chinese is an employment standards branch worker; there is not one Vietnamese worker. This makes it difficult for workers, even if they get through on the phone, to get their inquiry understood. Many workers have reported difficulties filling out the forms to file a complaint, and it is difficult to get assistance from an over-worked staff. In Metro the majority of the workforce speaks English as a second language. That is the reality today.

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We support the streamlined appeals process that has been proposed. As mentioned earlier, the branch, through a lack of resources, has been unable to deal with the current case load. We would also encourage consideration of some other ideas. We support the ability of the branch to sue corporations on behalf of workers under the Ontario Business Corporations Act. We also support another suggestion that has not been formulated, I believe, in relation to this, that there should be interest paid for wages and other moneys owing, right back from the original date that the money was owed, because that is not included in this as well.

We would just like to talk a bit about the issue of termination and severance pay. As stated earlier, the business lobby and much of the media would like to ignore current legislation that guarantees some workers access to termination and severance pay. We are concerned that this is money that workers are entitled to and that these moneys need to be kept included as funds that the program would deem to protect, as outlined in this programs proposal.

We also do not feel that the current legislation adequately allows all workers the right to collect severance pay. The restrictions of a payroll of \$2.5 million and at least 50 workers involved in the layoff or shutdown disallows a large number of workers from collecting these funds.

The last place of my own employment had a payroll that was way less than \$2 million and we had close to 200 workers, so I myself have been in that situation where we would have been disallowed severance pay. The International Ladies Garment Workers' Union has reported that between 1986 and 1988 it was involved with 19 plants that shut down that affected almost 1,200 workers. Only one group of workers was able to collect severance pay. In three cases, the employer laid off just under 50 workers so as to avoid paying severance pay. We would suggest that severance pay be provided for any group of 10 workers who are involved.

I would also like to make one comment on the proposed federal Bankruptcy Act. There needs to be a harmonization of the Ontario legislation with the proposed federal Bankruptcy Act to guarantee workers equal rights to moneys

owing, along with financial institutions in the case of a receivership, when a company is in financial difficulties.

As an example, in July 1988, Best Outerwear clothes company here in the city of Toronto still owed its workers over \$95,000. The bank that was owed the money was able to sell the accounts receivable but did not give over any of the receipts to the workers in question. This is something we would like to state again, that we believe it is important that workers' rights are included up there with the other institutions when it comes down to who is owed money in a bankruptcy.

In conclusion, we would just like to make roughly three points. We would like to make it very clear that we support the proposed bill and we do feel that there needs to be a protection.

The second point is the fact that the media and the public at large need to understand that back wages, vacation pay, termination and severance pay are workers' rights. These are not frills. These are not something that anyone should fritter away. There is a sense in the vast amount of stories that are out there that somehow employers are being hard done by if they have to come up with these things. What I was reminded of by the Lark case was when a worker came before a number of us with his case and said, "If I had stolen \$10 from my employer, I would have been put into jail a long time ago, but it has been three years for me to even look at over half a million dollars for all of us together."

The last concern we would like to raise is the one just around the access to the program itself. We think this could be a very useful start to what needs to be done to guarantee workers' rights in this province, but we are quite concerned that there will not be the amount of money for promotion of the program, multilingual access to the program, support for the workers in the branch to actually do their job and support for the branch to prosecute, if required.

I will stop there. Thank you for your time.

The Vice-Chair: I thank you for this part of your presentation. Do we have any questions?

Mr Offer: No real question, just a comment, as we are somewhat winding down on this. I sense that people recognize that there has to be at the very least something to do with wages and vacation pay. Then it starts to veer off with respect to different opinions as to whether termination should be in, whether notice should be in, whether severance should be in. You have a variety of opinions on that.

There was a point in your presentation where I had to leave for a moment. When you speak about the rights of the workers—and I do not think there is really any argument as to what is entitled under the legislation; that is clearly ascertainable, there is no problem—is it your opinion that the obligation should be borne by the taxpayers, as is now the case for the most part? The fund is being funded by the consolidated revenue fund; the consolidated revenue fund receives its dollars from taxpayers. No matter how one views the right of the worker and how one wishes to discuss the entitlement to that right, is it right and proper that the obligation be satisfied by the taxpayers? I would like to get your thoughts on that, because you have the

taxpayers paying, you have employers paying, you have potentially just directors of the companies which have run into difficulty paying. It is one of those things we have tried to grapple with, and I think your opinion would be quite helpful.

Mr Kidd: I cannot speak on behalf of my centre in that regard, in that we had a discussion of this today and we had a reference to that and there was no conclusion we could come to. We would much prefer the system that is proposed under the federal Bankruptcy Act, which would be an employer levy. We would be much more in support of that and we were concerned about it coming under general tax, but we came to no conclusion. All I can say is that we would be more in favour of that system, but we had similar concerns that it come under general revenues, particularly when we feel in the cases where it is an employer's responsibility for meeting these costs that are costs of doing employment in the province of Ontario, they should be prepared to pay them. But we did not come to a final conclusion.

Mr Arnott: I apologize, sir, for missing the start of your presentation, but I want to thank you very much for coming in.

Mr Kidd: No problem. Thank you.

Mr Owens: I appreciate your bringing up the issue of access, because there clearly is no point in having even the best programs in the world if people cannot access them. The issues you bring up are truly valid. I know we have folks here from the ministry, and I certainly hope that when they are setting up the agency they will keep these comments in mind and perhaps even go to some of the user groups you have identified to draw staff from so that you do have that ability to communicate in all languages and make sure that all people have access to the fund and to the information.

Mr Ramsay: That is if the legislation passes.

Mr Kidd: Even if it does not, it would be good to give support to that branch. It is a hardworking branch of the government and needs to have more support; and it means more access.

Ms S. Murdock: I want to thank you as well, and thank you for your presentation. As well as the points you raise, the employment standards branch is going to love you. They will now have transcript of Hansard to support what they have been saying for a long time, and the multilingual aspect is something that has been noted in other areas of the Ministry of Labour.

I just wanted to say on one point you raised, which was on the interest, it is covered in this legislation under section 40p, I believe: "Where money may be received by an employee under this part, or may be collected from a person who is liable to pay wages, interest may be collected on the money as prescribed." So there is that balance.

I just want to ask you about the 10 workers or more because there was a lot of discussion in that area.

Mr Kidd: I am sure.

The Vice-Chair: Very quickly, Ms Murdock, please.

Ms S. Murdock: We have 15 minutes left, Mr Chairman.

The Vice-Chair: Oh, I am sorry. My apologies.

Ms S. Murdock: Sure, sir. You are just so used to opping me.

The Vice-Chair: My apologies, Ms Murdock.

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Ms S. Murdock: Could you please explain why you feel that 10 is better suited than 50?

Mr Kidd: I think the concern was that 50 is too many. Have been through these processes before, deciding how many roomers in a rooming house is an appropriate number to be protected under legislation as well. I think the concern is again just around the fact that there are—I am sorry, I do not have the figures. That will be something we will try to get more of when we actually hand in our written presentation by the 15th of this month.

It is just that there are a lot of workplaces with even under 10. Increasingly that is the case under today's economy, and increasingly these are workers with no protection. I guess I chose the figure 10 because in the inquiry with a lot of different deputations into the Lark case a year ago where a lot of different people had worked on a number of different cases, this is the figure that was arrived at by the panel that day. That is why I chose it, but that is what it comes to, the fact that it is missing a lot of workers with the 50 and the 2.5-million payroll. It is missing a large chunk of the workforce. Again, I said that out of my own experience with a social service agency with close to 200 workers.

That is just the case in terms of the other figure as well. It is grossly inadequate, so it just misses a large part of the workforce. That is why it is funny to hear the claims that this plan is preposterous because it is going to give all these workers severance pay, when for most workers that is not an issue because they are just unable to access it under those kind of guidelines. They cannot get access to severance pay if their payroll is under \$2.5 million or their workforce is underaffected—it does not affect 50 workers. Like I said, in three cases that the IOWU dealt with, the employer laid off under 50 to ensure that he did not have to pay severance pay.

The Vice-Chair: Hearing no further questions, I thank you very much for your presentation.

CENTRE FOR INDIVIDUAL RIGHTS

The Vice-Chair: We are running ahead, and with everyone's permission, including the presenter's, I would ask if the Centre for Individual Rights would be ready to make its presentation now.

Mr Melady: I have a written paper. You may as well look at what I am looking at.

The Vice-Chair: I thank you for coming in today. Welcome to our committee.

Mr Melady: Good morning. My name is Patrick Melady. I am president of an organization called the Centre for Individual Rights. I would like to start by thanking the politicians here for being here to listen and to hear the concerns that the centre has on the issues represented by

Bill 70 and the amendments to the Employment Standards Act, among other issues. I thank you in advance and the submissions are made respectfully.

The Centre for Individual Rights has been established in response to a need on the part of individuals, both employers and employees, for a unique voice and a unique perspective on employment and business issues. There is a clear need for such a voice and a forum in which to raise and address employment legislation and regulation issues.

The guiding principles of the Centre for Individual Rights are that we believe in a democratic society with an economy that is driven by an unrestricted individual decision-making process and that these individual decisions will be responsive to the market needs and that this market responsiveness is critical to achieving prosperity in employment and in employment opportunity.

The Centre for Individual Rights believes that the individual is a primary decision-maker in determining the appropriate response to any market reality. The role of government should be to promote the individual, to support democracy and to unfetter the economy.

The Centre for Individual Rights believes that employment and employment security flows from a strong business community which is confident that its freedom to operate will be acknowledged and accommodated by all levels of government.

The Centre for Individual Rights views employer and employees as having a common purpose, that being to continue the business, expand the business activity and increase employment, to secure employment.

The Centre for Individual Rights believes that the government's role is to facilitate the realization of the business community's agenda. The focus of the centre is business and employment. We believe in "prosperity in employment and employment opportunity." We promote that.

Since May 22, 1991, the Centre for Individual Rights has conducted seven briefing sessions with concerned employers in Ontario. We have spoken to over 200 private sector and public sector employers regarding the NDP agenda for employment legislation and regulation. It is clear from the employers the centre has spoken to that the source of employment legislation and regulation has not been the business community. There is a widespread expectation in the business community that the NDP will engage in consultation. Indeed the Premier, Mr Rae, has committed to "a very broad consultation," but we have yet to see any definition of what that consultation would be and how the process would function. We await that definition.

The Minister of Labour, in the presentation of proposed legislation, relies heavily on referral to legal experts from labour and management. The Centre for Individual Rights believes this is similar to asking a fox to mind a chicken coop, that the reliance on legal experts does not take into account the needs and opinions of those who must live with the expert advice. Those are the employers and the employees.

The Centre for Individual Rights subscribes to the view that consultation is made up of problem identification, development of alternative solutions, analysis of the alternatives and, finally, acting upon those alternatives which

correct the problem identified. The Centre for Individual Rights has seen the NDP government of Ontario announce problem identification and solutions to be implemented in one breath. Bill 70, An Act to amend the Employment Standards Act to provide for an Employee Wage Protection Program and to make certain other amendments, is a current example of the NDP's failure to meet its own stated objective of a broad consultation.

The stated purpose of Bill 70, as I understand it, is to protect wages, vacation pay, severance and termination entitlements of employees of bankrupt employers. The stated purpose is commendable and we support it. The proposed legislation to establish a fund called the employee wage protection plan, to be funded out of general tax revenues by the Ministry of Labour, does not accomplish the objective. There is no security of wages, vacation pay, severance pay or termination entitlements.

The employee wage protection plan sets up investigations and administrative appeals processes to evaluate the failure to secure wages, vacation pay, severance and termination entitlements. The mechanisms proposed have no effect until an employee's job has begun the slide down the slippery slope to economic ruin, or in some cases, where there has been a declaration that the bottom of the slope has been reached and recovery is not a realistic alternative, the declaration of bankruptcy. The employee wage protection plan does not address the issue of securing the entitlements. The proposed amendment, which says that directors and officers of the business are then to be held accountable for employee entitlements, is neither progressive nor constructive in securing the wages, vacation pay, severance and termination entitlements of employees.

The attitude expressed here is that the business and the minds of the business were neither prudent nor acting in good faith when they sought to engage in business and subsequently create employment. This is a harsh, cynical and abusive view of business. It is certainly not conducive to encouraging more business activity, which is necessary to re-employ those directly affected by the employer's demise, ie, the former employees.

The employee wage protection plan and the other initiatives of Bill 70 do not accomplish the stated goals, and as such should be abandoned. Bill 70 should be put on the scrap heap. The Minister of Labour should begin again and this time there should be a real effort to canvass all interested parties in seeking a solution. That is my submission. I thank you very much for your time.

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Mr Arnott: Thank you for your fine presentation. I just want to ask you a few questions about your organization. I represent the riding of Wellington near you in Cambridge. Would you feel the opinions you have expressed are fairly broadly representative of the business community in your area?

Mr Melady: Yes. The briefing sessions of which I speak took place in communities such as Windsor, London, Cambridge, Kitchener, Waterloo, yesterday Guelph and again tomorrow in Brantford. I expect to hear the same thing, that the business community has not been consulted and

would in fact support the statement that Bill 70 does not accomplish the stated goal.

I have yet to hear anyone in the business community say it is not appropriate to secure wages, vacation pay, severance and termination entitlements that belong to employees under the law. No one challenges that. It is an entitlement. The methodologies we see presented in Bill 70 are quite frankly wrongheaded, inappropriate and ineffective. They examine failure. They do not secure. Then they seek to take yet further dollars from an operation that has already declared, "I have no money."

It makes no sense to me. It does not accomplish it. It is financed out of my pocket as a taxpayer and that is inappropriate. I pay for those severance entitlements and those vacation pays and those wages when I purchase the products or services rendered by that business to the economy. I do not want to be held accountable for it yet again out of my tax dollars. I would prefer to pay for it directly, not indirectly and not hidden, and that is what we are faced with in Bill 70. Do I digress? If you have another question, I am pleased to answer it.

Mr Arnott: No, that is fine. Thank you very much.

Mr Hugot: I notice the Centre for Individual Rights says that the stated purpose of Bill 70 is commendable and that it is supported by the centre in sort of a basic statement of principle, if you will. At the same time I seem to be hearing you say that the taxpayer should not be accountable for these wages that are owed workers. I assume you would say that the business community should not be put under any other further burden to compensate people for these lost wages. The point I am getting at is that if the principle is supported and the action we are trying to take is commendable, how would we achieve it then?

Mr Melady: I think the way to achieve that would be to consult with the business community before announcing a solution. My understanding is that the purpose of today's hearings and other hearings that take place on Bill 70 are to hear the opinions of the people and the community re Bill 70.

The Centre for Individual Rights is prepared to participate in any consultative process that deals with the issue of problem-solving. When it comes to making commentary on problems and solutions identified, we will participate by making our comments on the solutions identified. In this particular case it is not our presumption that the stated purpose of Bill 70 is to secure; it is a statement from the bill itself that its purpose is to secure.

We do not find, in our analysis of it, that the stated purpose of Bill 70 is accomplished by the content of Bill 70. If the government of the day is interested in hearing from the Centre for Individual Rights on alternative solutions, then it will adopt our recommendation that Bill 70 be put on the scrap heap and the consultative process be engaged in.

There are innumerable ways and means of accomplishing securing of wages that do not create administrative overheads and burdens for the taxpayer, yet place the obligation squarely where it belongs: on the individual or the business which engages in the activity that causes the employment. If the marketplace cannot handle the incremental costs of handling the

arden of severance and termination entitlements, then that business should not participate in the economy.

Perhaps the economy should pay more for the goods and services. I do not know. There are a lot of ways of dealing with it short of being punitive, short of being harsh and cynical and abusive in the assessment of the people who in good faith engage in business in this province.

I have yet to run into a business that is desirous of going into bankruptcy for the vicarious pleasure of pocketing termination entitlements, severance entitlements, vacation pay and wages of employees. You do not get rich sticking it to people; you do not succeed sticking it to people. Yet that is what the business community feels is happening to it. There is an assumption that the business operates with a new towards taking, as opposed to receiving, from the economy.

Mr Hugst: What would the view be in terms of someone who has been forced out of work and has waited, in some cases for years, for wages that are owed and still has not received them? Would you say those people would be harsh and abusive in asking for those wages and asking for a mechanism to get them the money that is rightfully owed them?

Mr Melady: No, certainly not. If it is an entitlement that that individual under the law, then let the law be enforced. Do not create more overheads and more burdens to be borne by the general taxpayer. If it is an entitlement under the law, then they should receive it, and they will receive it if it is an entitlement under the law.

I have faith in the justice system we have here. I have faith in the democratic process and that the obligation will be met. Bill 70 does not accomplish its stated purpose. How the government can continue to support that direction gives me at a loss.

Mr Ramsay: I thank you very much for your presentation. Just to comment on my colleague over here, Mr Hugst's question reflects, you know, the same sort of narrow, my-blinkers-on perspective that this government took with this particular problem. As we have related and you have related here, nobody disagrees with the principle of what you are trying to accomplish here in this legislation. Obviously the money due workers is due workers and we need to find a way, but you are having to direct your questioning all in this particular context of what we are doing here.

The point that has been made by the witness here—and having been in government previously myself and involved in other areas where I can see that good consultation was not done—is that when you identify a problem, you have got to sit down with everybody involved and find out how to solve it. In this regard, the people who are supposedly on either side of this agree there is a problem and that it has to be fixed. I guess what the present presentation is saying and others have said is, why do we not start again and sit down and find a way?

We have had some ideas put forward. I ask the presentation whether he really does have any specific ideas. We have heard the idea of posting bonds and of securing accounts. Certainly there must be mechanisms to do this,

because we all want to secure this somehow and it is a matter of finding the technique. I was wondering whether you had any ideas you may have considered or that other people in the business community have talked about.

Mr Melady: I do, and I would be prepared to put those forward for consideration when we know Bill 70 is on the scrap heap. The issue of posting bonds and the securing of wages is done time and time again. It is not done through payroll taxes; it is done through payroll. Allow business to operate, know what its parameters are in operating and it will continue. Continue to throw abuse and cynicism at it and it will choose to go elsewhere, if that is what needs to be done in delivering the goods and services.

I am sure there are minds better than mine turned to the issue of alternative solutions. The concept of posting bonds, the concept of allowing employers to calculate and put into secured accounts for the purposes of meeting those obligations, any number of things can be done. But the process we have before us in Bill 70 is an examination of failure, not a securing of the wages, vacation entitlements, severance and termination entitlements of employees. It leaves me exasperated at times that apparently knowing and thinking human beings are not cognizant of the economics involved in going after a bankrupt. The individual or corporation has already declared, "I have no money." The concept of levying a fine on a bankrupt does not accomplish the purpose. It is punitive, small-minded, narrow and cynical.

The Vice-Chair: The time has expired. I thank you very much for your presentation.

Mr Melady: I thank you very much for listening to me. I appreciate the opportunity, and I look forward to returning and dealing with the issue of securing wages, vacation pay, severance and termination entitlements in a consultative process.

1720

NIAGARA REGION DEVELOPMENT CORP

The Vice-Chair: We have one final presenter, Mr Duffy, I believe.

Mr Duffy: My name is Mike Duffy. I am the general manager of the Niagara Region Development Corp. I am not the other Mike Duffy and the CTV cameras are not in the background.

I am pleased to see that one of our local MPPs is a member of this committee and look forward to a further dialogue with her.

I am here at the direction of the board of directors of my corporation and with the support of the manufacturing and service industries in the Niagara region. Over 800 manufacturers, 1,400 business service companies and, in total, 12,000 businesses are resident in the Niagara region. We are optimistic that the dialogue today will continue in the future. Our concerns, I am sure, are not dissimilar to yours.

Before I get into more detail about our concerns with Bill 70, I would like to spend a few minutes outlining the initiatives and responsibilities of the Niagara Region Development Corp. It was formed in the depths of the 1981-82 recession to address previously unheard-of unemployment

levels and manufacturing closures. While continuing to promote the Niagara region as a location for new business investment and job creation, the NRDC has increased its attention to assisting Niagara manufacturing industries to improve their competitiveness, the ability to successfully compete, not just within the province of Ontario or Canada but within the global context.

Competitive companies generally offer a unique product or service and/or have a comparative advantage over their business rivals in such areas as lower cost, higher quality and superior service. Competitive companies, irrespective of size, enjoy greater prospects for growth and, more significantly, better withstand the increasing dramatic fluctuations in local, national and international economies.

The drive for competitiveness is a dynamic process, particularly now with the trend towards globalization of trade patterns, introducing new rivals for Niagara's traditional businesses in the North American market. The NRDC recognizes the necessity for Niagara companies to continue to innovate and invest in improved productivity, quality and market penetration to maintain their competitive position.

To assist in this activity, the NRDC is refocusing its efforts from an exclusively outwards-oriented search for new investment to a more balanced program integrating new investment with a recognition of the needs of Niagara's existing industries. Rather than focusing on job creation to make the region better, we are making the region better, ie, more competitive, as the key to creating more good jobs. We have cultivated a wide network of domestic and international contacts over the past 10 years. In addition to using this network to search out new companies, we utilize it to find new markets, technology and capital to revitalize Niagara's existing companies. A six-point plan has been developed and approved by our board of directors which will contribute to investment in Niagara in the improved competitiveness of Niagara's companies.

Our 11 largest manufacturers last year, 1990, contributed close to \$25 million in municipal taxes, had a combined payroll of \$684 million, and generated sales directly attributed to the Niagara plants only of over \$2.6 billion. The average wage cost to these 11 manufacturers represented \$47,535 per person, each employee generating the equivalent of \$183,000 in sales for his company.

A comparison to just 10 years ago, 1981, reveals a dramatic loss in manufacturing jobs. Overall industrial employment has dropped from 50,800 in 1981 to 47,200 in 1990, a drop of 7%. We look at the same period and employment in those same 11 largest manufacturers has dropped 15% from 17,000 to 14,000. Keep in mind that figure of \$47,535 per person.

Ontario's growth and prosperity have been based on its manufacturing strength. This holds true today, but our position has deteriorated. The trends of recent years show that Ontario's position as a major industrial manufacturing centre is under increasing stress.

The demands of today are that we must compete successfully within the global economy, and in particular we must improve our ability to compete for costs and quality with manufacturing industries not only in the United States, but in Europe and the Far East. These concerns of

those who work in industry in Ontario are not dissimilar to those of the provincial government. We all realize that business failure brings hardship and disruption for those who lose their jobs and for their families.

We all realize that other levels of employment in service and tourism are also reliant upon the strength of our manufacturing. Our manufacturers have made great strides in managing the costs within their control. Our manufacturers have invested deeply in Niagara and in Ontario, and within the bounds of reasonable risk.

The presentation today focuses on only one of the areas that impact upon the ability of our industries to remain competitive and so stay in business. For a manufacturing business with 100 employees with five-year average seniority and an average pay of \$40,000, the severance or termination pay would be about \$400,000. This amount is large in comparison to other amounts for which directors are personally liable under existing law. Employees would seek to recover these amounts from directors and officers of the businesses upon bankruptcy. The proposals in Bill 70 would then impose significant risk to those doing business in Ontario, thus making Ontario business less competitive than businesses in other neighbouring jurisdictions.

A director or officer is not able to avoid this liability unless he has the superior foresight to do so more than a year in advance of a failure. There is no recognition of the difference between directors and officers who have a ownership stake and those who, as outside directors or as employee managers, have no ownership stake.

Niagara Region Development Corp is also involved in a matchmaking service called Locating Investors for Niagara Companies, Inc, or LINC for short. We are constantly seeking out investors and management expertise to not only set up businesses on local ideas, but also to expand home-grown industry or retain existing jobs in a faltering business.

Bill 70 will be a significant deterrent to the participation of any new manager, consultant or investor, not only in a financially troubled business but also in a fledgling enterprise which is already starting up in a high-risk environment.

To avoid the legislation of Bill 70, the role of the intervenor would be relegated to that of an adviser whose actual participation would have to be carefully structured to keep the adviser from falling into the definition of "officer."

There are many other points contained within Bill 70 which our local entrepreneurs and businesses have advised me they have problems with. For the sake of time and the hour of the day, I would like to move on to another area.

Business has been under siege not only from your government but from our federal government, and indeed from the economic and market forces of the whole world. No one would come here today to say that the dropping of Bill 70 from your agenda would solve all of our problems. The problem is a cumulative problem.

Niagara Region Development Corp and Niagara businesses are asking you to reconsider some of the clauses which increase the risk of doing business. We ask this committee to broaden its mandate to address the cumulative impact of legislation in combination with the

economic and political forces which are tearing the livelihood from our communities.

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We did a recent survey of all manufacturing in the Niagara region, and we learned that 20% of the CEO-general manager-chief operating officer's time in Niagara business is currently devoted to the review of legislation, government relations and survival scenarios generated by, "What if legislation is passed?"

I am not saying legislation in general is not important government relations are not important, but when 20% every working day of our chief executives is devoted to non-productive effort, the time has come to speak up. Can you imagine the effect of diversion of that CEO's time to the development of new markets, increasing exports, development of new products, negotiating strategic alliances and joint ventures with other local manufacturers or indeed offshore companies, and increasing worker and machine productivity? The list goes on.

The cumulative effect of that energy diversion in our region of 800 manufacturers currently employing 45,000 skilled people would have enormous impact on the success of our companies. The increase in revenue to expand manufacturing facilities and hire or retain employees, and the desire to do more than just survive, would accelerate Ontario's industry once again to its peak performance.

Thank you for the time you have afforded me this afternoon. I look forward to further dialogue on this subject and on other pending legislation. I will be preparing copies of my comments and giving them to your committee.

Ms S. Murdock: Just a clarification: Some of the comments directly relate to Bill 70, particularly in terms of directors' and officers' liability and some of the other things you mentioned. Are you familiar with these recommended amendments that are going to affect the original Bill 70 or that hopefully will?

Mr Duffy: Yes, but not in as much detail as the other side. As you can understand, we started our consultative process and then we were aware of amendments.

Ms S. Murdock: I know the ministry staff have copies they have been providing, so we will make sure you get a copy before you leave. I think when you see what the amendments have done to the liability of directors, it will significantly change your comments.

Mr Duffy: Thank you.

Mr Offer: Thank you for your presentation, Mr Duffy. We have gone through some of the aspects of the principle of the bill. I have asked this on some other occasions, but is there a message that a bill such as this sends to the business community?

Mr Duffy: Yes, it does. The provincial government is not alone in increasing legislation. Our own municipal government is introducing further legislation related to development lot levies. It may not have a direct impact today on a manufacturer, but every time he wants to expand he would be looking at paying an additional \$2.50 for every square foot that he builds, and some of the structures in the Niagara region are very substantial structures. It is an increased risk of doing business.

My board of directors consists of 27 people, only four of whom are associated with regional government. All the rest are business people in the community representing virtually every sector of the community. At our last board meeting they indicated to me that in the past and present they are deluged with flyers and offers from other jurisdictions. They have never read them in the past. They have been devoted to the Niagara region or other locations in Ontario and Canada where they are located, but they find they are forced to change, one of the factors being increasing legislation, which is a further risk to doing business in Ontario.

Mr Offer: Under the legislation, there is a potential liability to directors personally. If one accepts the principle of protection of wages for employees in bankrupt companies, what would be your reaction if the liability to directors were eliminated—for small business, for instance?

Mr Duffy: I think that would be very well received. The example I gave you of our sister organization, LINC, is primarily for small business. The situations we are working with are a small number of employees. A great number, over 80% of all the businesses in the Niagara region, are less than 10 people. So yes, it would have a very significant benefit.

Mrs Witmer: Thank you very much for your presentation. Many of the concerns you have expressed have been expressed by other business people throughout the province over the last four days.

You talked about this being just one part of what is going on. What are some of the other areas of concern that business people in this province have?

Mr Duffy: Probably the single biggest one at this time has been the advance notice of possible changes to the Labour Relations Act. My understanding is that it is either an internal document or a white paper, blue paper or green paper, that it is certainly not at the stage of proposed legislation, as is Bill 70.

We have had virtually every sector of our community, including our greenhouse growers and farmers, concerned about the impact of possible changes in that area. We hear our greenhouse operators' concern that they may lose the exemption for hours of operation. They are telling us at the same time that the plants do not stop growing at 5 o'clock; they grow through the weekend and do not just start up again at 8 o'clock on Monday morning. They have very peculiar situations where they have to look after these kinds of things.

To keep on the same example, because it is the most current one I have met with, the flower greenhouses are currently a \$150-million business in the Niagara region. Nobody knows that. They are about three times the total dollars in our total wine grape and tender fruit industries. There is the devastating effect, when they are already competing with Holland. There is a 747 transport plane that comes into Toronto every single day with cut flowers from Holland which are distributed in Ontario. They are competing with them.

Mrs Witmer: That is very frightening. You made an interesting point about the fact that business people are now looking at the brochures that come in. I had one business

person in my community drop off a box of material that he has been collecting, and it was this high with brochures and enticements. I was shocked at what he had received.

Mr Duffy: As an economic development officer and a member of the Economic Developers Council of Ontario and the Industrial Developers Association of Canada, I can say that we constantly monitor what other states, what other countries are doing. Ontario once had an edge on a lot of jurisdictions and is rapidly losing that edge.

Many of the industries that located in the Niagara region initially, and some of these companies are close to 100 years old, moved there because of the availability of cheap and plentiful hydro power. The same industries are there. They still need the same amount of power. These are very energy-intensive industries; Atlas Specialty Steels, for instance. Atlas was purchased a short while ago by the Sammi group from Korea. They are now planning to spend \$500 million in Quebec. In my opinion, that should have been spent in Ontario, in Welland, where they have a much larger plant and over 1,000 employees currently there.

These are some of the concerns.

Ms Haeck: I want to ask Mr Duffy a quick question with regard to the nature of most of the employers. You talked about the 11 large manufacturers, but most of the employers are relatively small. Any idea of the exact size of their workforces?

Mr Duffy: The total manufacturing—

Ms Haeck: No, not the manufacturers, the other people who are members of the Niagara Region Development Corp or who you know exist in the region. Do they have under 10 employees, or 20? What is sort of the average size of the business?

Mr Duffy: Some 80% of all the businesses in Niagara are less than 10 people. The General Motors of 9,000 people is unique.

Ms Haeck: Right, and obviously Atlas is, with its 1,000 or whatever, or John Deere. They are relatively rare.

Mr Duffy: There are only five or six companies of 1,000 or more.

Ms Haeck: So in reality, most of this legislation really would not affect most of the employers of the Niagara region, since they have under 10 employees?

Mr Duffy: Many of those companies have boards of directors.

Ms Haeck: No, as far as paying some of these—

Mr Duffy: Yes, under that criterion.

Ms Haeck: As well, most—

Mr Duffy: Excuse me, but what is a "small business? Is it a small business at 10? I would say no; most of a small business is probably under 200. You are getting in a larger group of companies that are within that area.

Ms Haeck: As for entitlements, my concern is that there is a certain message around the entitlements that people who may have worked in a company which for whatever reason has closed its doors are not entitled to the wages at which they worked. I am concerned about that particular message. There is a concern on the part of the directors but those people who may have actually put in those hours also have mortgages and they obviously go to the local grocery store and buy food and put clothes on the children's backs. I am just trying to figure out how we deal with entitlements.

Mr Duffy: I think the vast majority of people in this province do not understand the legislation. I think this one of the good points that has come forward with not only changing legislation, but perhaps the controversial nature of how this particular legislation has been introduced. It is getting a lot of press coverage. It is getting a lot of interest by parties who had never previously been interested in it. So maybe there is a good aspect to some legislation as we learn a little bit more of how we all operate here and think that is good.

The Vice-Chair: I thank you very much for your presentation to the committee. It is nice to hear from the Niagara area. I think it will also help us in our deliberations, I guess in a week's time, when we go through this and try to come together and work this out as to what we are going to be doing.

Mr Duffy: Thank you, Mr Chairman. I will be sending a copy of my deliberation to you.

The Vice-Chair: I would like to take a moment to thank each member of the committee. You have made it very easy for me this week and I thank you for that. It has been a good week as Chair and I guess we will see each other in about a week's time.

At this time I am adjourning the committee for this week.

The committee adjourned at 1744.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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 Offer, Steven (Mississauga North L)
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 Wood, Len (Cochrane North NDP)

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 Owens, Stephen (Scarborough Centre NDP) for Mr Dadamo
 Witmer, Elizabeth (Waterloo North PC) for Mr Jordan

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Standing committee on resources development

Employment Standards
Amendment Act (Employee
Wage Protection Program), 1991

Chair: Peter Kormos
Clerk: Harold Brown

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Journal des débats (Hansard)

Le lundi 19 août 1991

Comité permanent du développement des ressources

Loi de 1991 modifiant la Loi
sur les normes d'emploi
(Programme de protection
des salaires des employés)

Président : Peter Kormos
Greffier : Harold Brown

Publié par l'Assemblée législative de l'Ontario
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 19 August 1991

The committee met at 1308 in committee room 1.

EMPLOYMENT STANDARDS AMENDMENT ACT (EMPLOYEE WAGE PROTECTION PROGRAM), 1991 LOI DE 1991 MODIFIANT LA LOI SUR LES NORMES D'EMPLOI (PROGRAMME DE PROTECTION DES SALAIRES DES EMPLOYÉS)

Resuming consideration of Bill 70, An Act to amend the Employment Standards Act to provide for an Employee Wage Protection Program and to make certain other amendments.

Reprise de l'étude du projet de loi 70, Loi portant modification de la Loi sur les normes d'emploi par création d'un Programme de protection des employés et par adoption de certaines autres modifications.

The Chair: First, I do want to thank Mr Waters for chairing the first week of these hearings. I sincerely thank him for subbing for me. I suspect he did a far better job than I would have in any event.

Mr Waters: No comment.

The Chair: We are commencing clause-by-clause consideration of Bill 70. There are some persons sitting here as staff persons. Perhaps Ms Murdock would introduce them or have the staff persons introduce themselves.

Ms S. Murdock: Laura Hopkins is legal counsel for the Ministry of Labour. Peter Jenkins is the provincial specialist for the employment standards branch. Finally, Sherith Muir is the policy project manager for this particular employee wage protection program. I thank them for being here.

I believe that the deputy minister, on the first day, went through the entire proposed amendments and bill pretty thoroughly. If you want me to, I will go through it as he did, but I just feel we might as well start on clause-by-clause, if that is agreeable to everyone.

The Chair: I expect so. I should indicate the first four sections, sections 1, 2, 3 and 4, stand by themselves. Section 5, of course, entails a whole lot of sections, and I suspect the committee would prefer that section 5 be dealt with by what will be actual section, to wit, section 40, section 41, etc. So we will commence. Prior to that, I would ask whether either of the two opposition parties have preliminary comments that they would want to make.

Mrs Witmer: I do not have any preliminary comments, but I do have a list of our amendments and I am just wondering when you want to receive those.

The Chair: You could file them now and ensure their speedy distribution. Then nobody can claim surprise. Thank you. I appreciate that. The clerk will receive those from you.

Mr Offer: As a preliminary before we get involved in the clause-by-clause, which I hope will proceed expeditiously, there are two things which we heard in the consultation process that are of some concern. They are areas for which the committee does not yet have any information.

The first is the impact this bill may have on the small business community, however that is defined. To date, our interest and attention has been focused on the Ministry of Labour, and rightly so, since it is the ministry with carriage of the legislation. There is also, however, with the Ministry of Industry, Trade and Technology, a small business advocate. I believe that is Norm Jamison. I believe that obviously should continue, and this is not meant in any way to stop the clause-by-clause deliberation, but I would propose a motion. So as an opening, I would propose that motion, Mr Chair. If you feel that it is in order, I believe that it is.

The Chair: Mr Offer moves that we obtain from the small business advocate of the Ministry of Industry, Trade and Technology any information that the ministry has that deals with the impact this bill may have on the small business community.

Mr Offer: I have a second matter which I would like to deal with after this. I have again prepared this particular motion that might be of some assistance.

The Chair: I am satisfied, subject to what anybody might raise by way of objection and comments, that the motion is in order. Do you want to speak to the motion, or have your preliminary comments constituted your having spoken to the motion?

Mr Offer: In the main they have; however, I do believe we heard an inordinate amount of presentation by representatives of the small business community talking about the legislation and talking about what this legislation means to them. I do not believe in any way that should detract from the principle of the legislation, but I do believe it is incumbent upon us—if not our obligation, surely our responsibility—to at least question the small business advocate of the Ministry of Industry, Trade and Technology about whether there is any information which he has amassed that deals with the impact this particular bill may have on the small business community. Some of the areas that quickly come to mind are the issue of insurance, whether it is available, and if so, the cost of obtaining that type of coverage, and of course the type of coverage that would be needed.

So that is why I would ask that this motion be supported by all members of the committee. It just moves towards our greater appreciation of not only the principle, which I believe the ministry and members coming before this committee have shared with us, but also some of its impact and implications.

Mr Klopp: Am I to take it from this motion that you wish the parliamentary assistant, in this case Norm Jamison, to review this as we go on clause-by-clause, or are you saying that we should stop everything and have him look at this bill first?

Mr Offer: I am not suggesting for a moment that the clause-by-clause deliberations be stopped. I am suggesting that the committee be aware and apprised of any information that the small business advocate in the Ministry of Industry, Trade and Technology has with respect to what this bill means to the small business community.

The Chair: Any further comments, Mr Klopp?

Mr Klopp: Other than I am hoping, knowing the PA will probably do an excellent job in his position, then he will probably review a lot of policies that are in this government or from previous governments. I think he will not be able to draw a lot of conclusions in the next four days, for instance. What happens if he does not have any information for us? Is that all right? Is the motion just that we make him aware of this bill?

The Chair: Please, Mr Klopp, we could get involved in questions and answers all afternoon. I trust that was put in the interrogative only to make a statement.

Mr Klopp: Sure.

Mrs Witmer: Have we heard the motion?

The Chair: Yes, the motion is on the floor.

Mrs Witmer: There is no seconder yet.

The Chair: No need for one, I am told. That is the case.

Mrs Witmer: I would certainly support that particular motion. I continue to hear from the small business community. They are concerned about not only the short-term effect of the wage protection fund but also what is going to happen in 18 months as far as the funding is concerned. I certainly think we need more information as to the impact on that small business community. Before we give final approval I would like that information.

The Chair: Prior to Ms Murdock speaking, the motion is as follows: moved by Mr Offer that the small business advocate within the Ministry of Industry, Trade and Technology present any information the ministry has collected with respect to potential effects of Bill 70 on the small business sector in the province.

Ms S. Murdock: I personally do not see any problem at all in Mr Offer's motion and would be in favour of that. I just have one question in terms of that. Would it have to be a personal appearance by the ministry, or could it be in written form?

The Chair: Here is the motion.

Ms S. Murdock: Yes, I understand that.

The Chair: The motion does not call for an appearance.

Ms S. Murdock: Then I am in favour of it.

The Chair: Are there any other comments on the motion?

Motion agreed to.

The Chair: Mr Offer, you had another matter.

Mr Offer: I think it is important that we are given that particular information. We know that after this committee this matter is going to go back into the Legislature for third reading, and certainly that is going to be important information.

One of the other areas that people brought forward to us in their presentation, and I am sure all of us have been hearing not only within this committee but throughout our constituencies, is how this particular piece of legislation is going to be funded. It is clear, and I believe the minister was patently clear, that for the first 18 months of this legislation, commencing October 1, 1990, the funding of this particular piece of legislation would come from the consolidated revenue fund.

Questions and concerns have been raised dealing with what happens after the 18-month period. I think arguments as to how this particular fund is to be seeded will cover the whole gamut, but again, it seemed to me that we directed much of our attention to the Ministry of Labour, to the deputy minister, the parliamentary assistant and the officials of the ministry, and potentially, I think maybe this is a question which should properly be posed to the Treasurer. The Treasurer is the one, as we all know, who has the big say in how programs are to be funded—in fact, whether programs are to be funded, so I would propose a second motion.

The Chair: Mr Offer moves that as a result of the presentations which we have heard both within this committee and indeed outside, the Treasurer confirm that there will not be levied an employers tax as a result of Bill 70 after the initial 18-month period.

The motion is on the floor. Do you want further opportunity to speak to that motion?

1320

Mr Offer: Just very briefly. Again, one cannot deny that many people spoke to this particular issue not knowing what is going to happen in the 18 months after this bill has been in force. I would think that although we properly—and in fact, as I recall, in his opening remarks the Minister of Labour very rightly dealt with this issue, we all realize it is not within the purview of the Minister of Labour but rather the Treasurer of this province.

I would like to hear, and hence the reason for this motion, the response to the Treasurer dealing with the funding of this legislation after the 18-month period. We know how it is going to be funded prior to the 18-month period; that is not a question. But there is a question as to how it is going to be funded after the 18-month period. I believe this motion is important in so far as we hear from the Treasurer whether it is going to be so funded by an employers tax.

The other thing is that the 18-month period—correct me if I am wrong—commenced October 1990, and so we are no longer talking about an 18-month period. That period has reduced each month since October. It seems to me the Treasurer will now discuss, or has already been discussing, how this program is to be funded in the very few months ahead. That is very close at hand; probably five or six months away, a final decision will be made. It may be

at within the Treasury a decision has already been made. I believe it is important for us to inquire of the Treasurer a confirmation as to the funding of this program after the 8-month period.

Mr Arnott: I would like to speak to this motion and indicate that I support it. I certainly have grave concerns about the possibility of a new payroll tax being added to the employers of Ontario. When we talk about the 18-month factor, if we turn back the clock about 18 months, I guess it was in the 1989 budget that the employer health tax was brought in and most fairminded observers recognized that a new payroll tax—or any payroll tax, whether it be the employer health tax or perhaps one in the future—will be a killer of jobs and reduce the number of jobs created in the province. I think we had better reflect upon that.

The Chair: Are there any other comments on the motion?

Ms S. Murdock: I would like to remind the committee of the statements made by the minister on the day he was here. He made it quite clear at that time that the Treasurer was fully aware of the situation and that even to him at that point—and at the present time, because that was only two weeks ago—the Treasurer was going to make a decision when he looked at the situation at the end of the 8 months and could not make a decision, or at least was not about to advise us at that time, whether there would be an employers tax or whether it would continue under the consolidated fund. So I would not support this particular motion.

Mrs Witmer: I support the motion. I have grave concerns about another payroll tax. As my colleague has just mentioned, the employer health tax was introduced by the liberal government and it had a severe impact on the individuals in this province. Employers are still reeling from that and to now introduce this wage protection fund without any assurance that there is not going to be a further payroll tax would be grossly unfair. I think it is going to influence what some of these small business people do, whether they stay in this province, whether they grow or whether they reduce the size of their operation. I think we have to eliminate that uncertainty.

There is enough uncertainty in this province at present. They are very concerned about the changes to the Labour Relations Act and all sorts of other legislation. We have to alleviate that fear.

The Chair: Thank you, Mrs Witmer. Any other comments, Mr Offer?

Mr Offer: In response to Ms Murdock where she refers to the statements of the minister that at the end of the 8-month period the funding is going to be reviewed, I think we all recognize that is way too late. At the end of the 18-month period there is, in essence, no more money in the till and there are still going to be claims made. The question will be, come 18 months and one day and there is a claim—that is way too late to determine how you are going to pay the particular claim.

We all recognize that decision has to be made well in advance of the expiration of the 18-month period. We are

now clearly moving in on the 12th month for which the consolidated revenue fund is the funder, and it is clear those decisions have to be decided now, that the concerns or factors to be taken into consideration have to be done now. One should not be afraid to ask the Treasurer to confirm these things.

The Treasurer will know, if not today, very shortly, how this fund is going to be happening. It is not going to be in 18 months, that is too late, but he is going to know very shortly and when we speak to this legislation we have to recognize that people came before the committee and spoke about this as an aspect of their concern. It is certainly our obligation to ask the Treasurer whether he has, at the very least, heard those concerns and whether, while retaining the principle of the legislation, he is going to be receptive to those concerns.

The Treasurer is making these decisions right now. By the time this bill gets into the Legislature we are going to be under six months, five months, four months, and I believe this is important information for us to have on hand as we continue the deliberation of this bill. At the very least we should be giving impetus to some of the concerns that were brought forward to the committee.

I am not going into how these particular hearings were short-circuited. However, on the basis of this motion we should not be afraid to ask the Treasurer this particular question.

The Chair: Mr Offer moves that the Treasurer confirm that there will not be levied an employers tax as a result of Bill 70 after the initial 18-month period. Those in favour? Those opposed?

Motion negatived.

Section/article 1:

Ms S. Murdock: An Act to amend the Employment Standards Act to provide for an Employee Wage Protection Program and to make certain other amendments, looking at subsection 1(1).

Mr Klopp: Mr Chair, on a point of order: Could I make a motion in here at this time? If we are going to be starting to read the clause-by-clause and all that right now—I am new at this and I apologize. We have the bill in front of us and we have amendments. I wonder if we could make a motion to dispense with reading of the section-by-section and just go to the explanation parts, since I have my bill in front of me. Is that clear enough? I would like to move a motion to dispense with the reading of each of the sections of the bill, instead of having to read every one of them over to us again?

The Chair: I appreciate your efforts to assist, but in my view it is not necessary for each section to be read. Reference will be made to the section number since everybody has a copy. It was agreed by the committee that the amended bill would be used for the purpose of reference. Reference to the section number will suffice and it will not be necessary to read the complete section, as printed, on to the record.

1330

Ms S. Murdock: Subsection 1(1) of the bill adds to the existing exemptions under the procedural requirements

of the Statutory Powers Procedure Act. It strikes out some of the sections and substitutes with some of the new provisions.

The Chair: Perhaps you could speak to subsection 1(2), due to the fact that we will be dealing with section 1.

Ms S. Murdock: Subsection 1(2) of the bill exempts decisions of the wage protection program administrator from the Statutory Powers Procedure Act. In other words, it shields the administrator of requirement of holding a hearing initially, and the appeal in the Statutory Powers Procedure Act is protected.

The Chair: Could I hear a motion with respect to section 1 so it can be debated?

Ms S. Murdock: All of section 1 I move for adoption.

Mr Offer: I have some amendments being circulated at this point.

Ms S. Murdock: I will explain, if I may.

The Chair: Do the amendments that have been prepared relate to section 1?

Mr Offer: They may have an impact on section 1.

Ms S. Murdock: The amendments that you presented today?

Mr Offer: Yes.

Ms S. Murdock: In that case I would ask we stand them down for the moment until we look at your amendments and go on to the next.

The Chair: Might your amendments affect section 2?

Ms S. Murdock: Maybe I had better not set a precedent here.

Mr Offer: Have you moved section 2 yet?

The Chair: No.

Mr Offer: The only reason I say this is out of caution. It may be that the amendment does not have an impact, but one of the amendments we will be calling will be for a procedure whereby there will be a due diligence defence by directors.

The Chair: Mr Offer, in appreciation of Mrs Witmer having had her amendments prepared and distributed, it is obviously useful for everybody here to have everybody else read their amendments before they engage or participate in discussion. If somebody wanted to move a five-minute recess, it might be wise to entertain that.

Mr Huget moves that the committee recess for five minutes.

Motion agreed to.

The committee recessed at 1333.

1346

Mrs Witmer: I have a suggestion at this point in time, Mr Chairperson. I have just received, as we came into this committee, a copy of Bill 70—that is the first I had seen it—and also this book prepared by the Ministry of Labour, which I really appreciate. I wonder if there would be an opportunity for us to adjourn at the present time and resume tomorrow at 10 o'clock, as scheduled, after all of us have had an opportunity to read the bill we are dealing with in printed form, which I had not seen until I came into

this room, and also the explanations that have been provided for us as far as the amendments are concerned which I really appreciate. My understanding is that we are going to finish the work on Bill 70 by Thursday. That certainly would still be my hope and my intention. I would simply like an opportunity to read the information first, feel as if I am giving approval or making changes a little bit in the dark.

The Chair: I should ask people to note that a motion to adjourn is not debatable, but since you have not made the motion yet, appreciating that you might be making the motion very soon, are there any other comments?

Ms S. Murdock: Yes. Just for the record, Mr Chair, I want to explain that this book handed out by the ministry as I stated after the recess, is an explanation of the current provisions of the Employment Standards Act, the new provisions and then any of the explanations, but it covers only the first five sections of the amendments. It does not cover from section 6 on yet, but it will as soon as possible.

The other thing is that I agree it is very difficult to discuss or debate any kinds of provisions if they have not been read. It makes it much easier when we have all had an opportunity to look at the same information. But on the last comments of Mrs Witmer, with the intention being that we will be finished Thursday, I hope, we would then deem that all issues not discussed would have been debated?

The Chair: Mrs Witmer, do you want to respond to that? If you do not want to, that is okay, too.

Ms S. Murdock: If on Thursday we end up with a number of clauses that have not been discussed, would we deem them to have been debated at the end of Thursday?

Mrs Witmer: My intention is that we would be finished and have discussed and debated all clauses by Thursday.

Ms S. Murdock: That does not answer the question. It was well done. I agree with what Mrs Witmer has said but I would simply like, if I can, to have it clear that added to that—there is not a motion on the floor—whatever is not completed on Thursday would be deemed to have been debated.

The Chair: That can be done by way of motion or by unanimous consent, but Mr Ramsay wanted to speak.

Mr Ramsay: To give comfort to the government members, I was going to suggest the same thing, that in the motion, because it is the intention to have this business finished by Thursday, we would have some sort of explanation—maybe a friendly amendment or maybe Mrs Witmer could consider that in her motion when she does move it—that she wants some time now, as others of us in the committee do, but that our intention is to have the work finished by Thursday afternoon.

Mr Offer: I think it is the hope of all of the members that we will have discussed all of the sections, amendments and, potentially, amendments to the amendments to those sections by, at the very latest, Thursday. I guess my question is, maybe to the Chair or to the clerk, it seems that at the end of that particular point in time, no matter where we are in the bill, the bill is going to be referred

ack. I think that just happens automatically. It would be nice to get a clarification on that process right now.

The Chair: I should indicate I am not aware of what you are speaking about, and that means I cannot confirm or refute it. Perhaps in response, is there anybody who wishes to speak to that particular matter as to what was the agreement between House leaders?

Ms S. Murdock: We discussed the fact that it would be helpful to look at Bill 70 and the reprint, because the reprint was only handed out to the members—some of them received them on Friday in their offices but, since most members are not in their Toronto offices on Friday, I did not see them until today. Some did not get them until they came in here. As a consequence, the discussion was—correct me if I am wrong—that since it was expected that with a few exceptions of differences of opinion, most of this bill should be through by Wednesday, could we adjourn for this afternoon so that each group would be able to look it over and go through it in detail? On that agreement, then, we would adjourn for the afternoon. That was my understanding. All I am asking is that I would like some agreement on my understanding—perhaps legislative counsel would be able to correct me; I do not know—about anything not finished would be debatable in the House. Is that correct?

Mr Nigro: Actually, on matters of procedure, on what happens after it is reported to the committee, I defer to the clerk on those things.

Clerk of the Committee: What could happen is that when the Chair reports the bill in the House, if enough members stand, it would be referred to the committee of the whole House and debate could continue in the House committee of the whole.

Ms S. Murdock: Regardless of what motion was agreed to here?

Clerk of the Committee: Yes.

The Chair: Look, I am aware only of the agreement among House leaders that this committee have two weeks for consideration of the bill.

Ms S. Murdock: Oh, I see.

The Chair: That is the extent of the agreement I am aware of. I cannot speak to anything in addition to that. I am going to ask Ms Witmer to put her motion forward. It is not debatable. It is amendable, so people do what they think they should be doing.

Mrs Witmer: I would like to make a motion at this time, and I hope it would incorporate what is being discussed here, that we would adjourn until 10 o'clock tomorrow.

The Chair: Is that your whole motion?

Mrs Witmer: What would you like added?

The Chair: Far be it from me, Ms Witmer.

Mr Ramsay: Maybe I could move a friendly amendment that it be the determination of the committee to complete its business by Thursday afternoon, just if you would like that as insurance.

The Chair: Mr Ramsay, in your amendment, is there a formula for doing that? Is there a means being prescribed?

Mr Ramsay: Just work hard, starting tomorrow morning.

The Chair: Any other amendments? Do you accept the amendment?

Mrs Witmer: Yes. In fact, if you want to incorporate that in the main body, that is fine, the intention that we would finish by Thursday.

The Chair: God bless you. All in favour? Opposed? Carried.

Motion agreed to.

The committee adjourned at 1355.

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Tuesday 20 August 1991

**Standing committee on
Resources development**

**Employment Standards
Amendment Act (Employee
Wage Protection Program), 1991**

**Chair: Peter Kormos
Clerk: Harold Brown**

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**Journal
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(Hansard)**

Le mardi 20 août 1991

**Comité permanent du
développement des ressources**

**Loi de 1991 modifiant la Loi
sur les normes d'emploi
(Programme de protection
des salaires des employés)**

**Président : Peter Kormos
Greffier : Harold Brown**

**Publié par l'Assemblée législative de l'Ontario
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday 20 August 1991

The committee met at 1004 in committee room 1.

EMPLOYMENT STANDARDS AMENDMENT ACT (EMPLOYEE WAGE PROTECTION PROGRAM), 1991

LOI DE 1991 MODIFIANT LA LOI SUR LES NORMES D'EMPLOI (PROGRAMME DE PROTECTION DES SALAIRES DES EMPLOYÉS)

Resuming consideration of Bill 70, An Act to amend the Employment Standards Act to provide for an Employee Wage Protection Program and to make certain other amendments.

Reprise de l'étude du projet de loi 70, Loi portant modification de la Loi sur les normes d'emploi par création d'un Programme de protection des salaires des employés par adoption de certaines autres modifications.

The Chair: Before we get down to Bill 70, there is one matter, a letter dated August 2, 1991, from Rev Dr David Williamson from Victoria Avenue United Church in Chatham, who writes thanking the clerk for the opportunity to speak to this committee on Bill 70 when this committee commenced its consideration of the bill. He had the understanding that he would receive some compensation for travel expenses and very respectfully, politely requests compensation for the return trip from Chatham to Toronto, 100 kilometres, and requests that we let him know. Can I ask that there be unanimous consent for compensation to Rev Williamson?

Agreed to

Mr Offer: That is the Legislative rate, is it not?

The Chair: First, we might have persons sitting at the table who are not members of the committee, identify themselves and who they are with so that we know who is here and for what purpose.

Ms Hopkins: My name is Laura Hopkins. I am legal counsel to the Ministry of Labour.

Mr Jenkins: My name is Peter Jenkins. I am provincial specialist with the employment practices branch.

Ms Muir: I am Cherith Muir, policy project manager for this project with the Ministry of Labour.

The Chair: Are there any matters to be raised by any members prior to consideration of Bill 70?

Mr Offer: If I might ask the parliamentary assistant, you indicated yesterday that for the last portion of the bill there would be explanatory notes and I am wondering if we might be able to expect those some time today.

Ms S. Murdock: Yes. If Cherith would answer, it could be appreciated.

Ms Muir: I will have to ask you to repeat the question. I was conferring about something else and I did not quite hear it.

Mr Offer: Yesterday we were provided with a very good explanation of the first part of the bill. We were informed that the last portion of the bill would also be available today. The question is, will it be?

Ms Muir: Yes, we will have additional portions. We will not have right to the end, but we do have an additional portion for you, and my colleague will be bringing it.

Mrs Witmer: I have one question. What additional amendments were made by the government as a result of the presentations to the committee several weeks ago?

Ms S. Murdock: I do not know exactly. We were just discussing that this morning, so I have to apologize for not having that right at the tips of my fingers. There are a couple of amendments still to come from suggestions made at the hearings, but the ones specifically we are looking at are the agreements with the federal government's lines that were made during the public hearings.

The other thing is that this whole bill is an example of all of the comments made not just at the public hearings but prior to the public hearings, with the comments made in the House during debate as well as all the letters the Ministry of Labour received on director's liability, for instance and the amendments that have been made subsequently to this reprint, as evidenced from the first reading to this reprint of the changes that have been made.

1010

Mrs Witmer: If there are additional amendments that have been made as a result of that week of presentations, I wonder if we could have a copy of those amendments.

Ms S. Murdock: As an example, the one group that was before the committee during the public hearings was in the construction industry asking for a number of things. They are still being negotiated and it is really difficult because the language has to say what we have discussed in the consultations with them. Even looking at the draft language this morning, there are still some changes that have to be made. So as soon as I have them, you will have them. I do not have them yet myself. That is for sections 40qa and 40qb, which will relate to 40f as well.

Mrs Witmer: I have a problem giving approval to parts of this legislation when we have not seen all of the amendments that the government is going to be introducing, because I am not sure of the impact of the additional amendments on what I am already giving approval to.

Ms S. Murdock: I understand the question. It took a little while, I apologize. The reprint has the amendments, with the exception of the three. When I get to them, I am going to ask to stand them down until we have the language, because sections 40qa, 40qb and 40, which will relate to section 40f, all having to do with the construction industry, are the only areas out of the reprint where we will

be asking for any amendments. Everything else is what we are asking.

Mr Offer: Following Ms Witmer's question, I think we might have a small problem that I believe should be clarified right at the very outset. The problem I see is that we passed unanimously, if memory serves me correctly, the reprint of the bill, which embraced the amendments the minister had announced in the Legislature. I think we are not dealing with that bill now. I think we are dealing with the bill that not only embraces the amendments the minister announced, which we had agreed to do, but also amendments which were as a result of the public hearing process. I think that might be a difficulty because I would have thought those amendments would have been most properly moved as other amendments so that we could clearly see from the government's side what amendments to the reprinted bill were being moved by the government. Right now, we are going to have to relook at the reprinted bill, find out what amendments are as a result of the minister's announcement in the House and what amendments, as reprinted, are as a result of the public hearing process. It somewhat puts us in a difficult position.

I think a clear example of that is the final amendment in this book, which talks about the right of the minister to enter into an agreement. I do not believe that was part of the original bill. I do not believe that was part of the minister's statement in the House on amendments to the bill. I do not believe that was part of the motion that we all agreed to, to reprint the bill, but it happens to be found within the reprinted bill and that is one example. There may be other changes of a word, of a technical change here or there which is not self-evident. I think that amendments to a bill have to be evident to the members of the committee before they can pass it.

The Chair: You are quite right. Any amendments that are not contained in this Bill 70, as amended, are going to have to be presented just as you have presented them and just as the Conservative caucus has presented them. They are going to have to be moved and they will be debated and voted upon. Otherwise, the agreement, as I understand it, is that Bill 70, as amended, as reprinted, will constitute notice and moving of the amendments contained in the reprinted bill. Any other amendments, you are quite right, are going to have to be moved and will then be debated.

Ms S. Murdock: Mr Chair, I would like to ask the clerk a question. I remember during the public hearings when we passed with unanimous consent, as Mr Offer has stated. This was submitted to you at that time, was it not?

Clerk of the Committee: I am sorry, I do not understand.

Ms S. Murdock: When were the amendments submitted to you?

Clerk of the Committee: I did not receive any amendments until I got the reprinted bill last Thursday.

Ms S. Murdock: Okay. We had it reprinted.

The Chair: Section 1 of the bill, being subsections 1(1) and 1(2).

Ms S. Murdock: We have discussed this with the other members and have asked to stand down the first section.

The Chair: Do we have unanimous consent in that regard?

Agreed to.

Ms S. Murdock: If I may just stand down the second section, the third section, the fourth section and go immediately into part XII-A of the act.

The Chair: Do we have unanimous consent with respect to the other sections which Ms Murdock speaks of?

Agreed to.

Section/article 5:

The Chair: Okay, dealing with part XII-A of the act and notwithstanding that this is section 5 of the bill, we have already agreed that we will deal with it section by section as it will appear in the amended act. Ms Murdock, subsection 40b(1). I say subsection because there will be as I understand it, amendments proposed to subsection 40b(2).

Ms S. Murdock: Subsection 40b(1) is the establishment of the employee wage protection program. Subsection 40b(2) is the definition of wages. Do you want to do subsection by subsection?

The Chair: In view of the fact that there are going to be amendments moved with respect to subsection 40b(2) we are going to have to deal with subsection 40b(1). Otherwise, we can have that stood down so we can deal with all of section 40b, subsections inclusive.

Ms S. Murdock: My feeling would be that we should do section 40b and all of the subsections clause-by-clause.

The Chair: Is there consent in that regard?

Agreed to.

The Chair: Thank you. Perhaps you can proceed then on the basis of dealing with all of section 40b, subsection (1) through (7), by way of explanation and then there will be amendments moved.

Ms S. Murdock: All right. Subsection 40b(1) is simply naming the program and establishing it. Subsection 40b(2) is defining what "wages" will mean for the employee wage protection plan, and in clause (a) it is wage commissions, overtime, vacation, holiday, termination and severance. In (b) it is wages under subsection 33(4), which is where the employer has violated the equal pay requirements under other legislation.

Clause (c) is the section referring to the Support and Custody Orders Enforcement Act and (d) is "such additional payments as may be prescribed by regulation." This specifically, in this particular instance, relates to the construction industry but is also regulatory, so that in other areas where it may become necessary, such as the garment workers who presented their presentation to us, it may be needed there.

Subsections 40b(3), (4), (5), (6) and (7) go into a clarification of what vacation pay, holiday pay, overtime wages, termination and severance will mean.

If you want more detail, I can go further, but that will sort of summarize what that entire section says, and I know that there are recommended amendments from the Liberals and the Conservatives on a number of those areas.

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The Chair: Mrs Witmer moves that subsection 40b(2) of the act, as set out in section 5 of the bill as reprinted, be struck out and the following substituted:

"(2) When an employee is compensated by the program, the wages for which an employee may receive compensation are regular wages and vacation pay."

Mrs Witmer: As I have said many times and as our party has said many times, we certainly do support the principle of employees receiving wages that they are owed. We are simply looking to define wages as those wages that are actually earned and we would include within that vacation pay, holiday and overtime. We also feel that this would parallel the proposed federal program.

At the present time, employees in this province have no protection such as is being proposed by the wage protection program, and this is certainly a move in the right direction, but we are very concerned about the addition of the severance and the termination pay. At the present time, when we take a look at our economy, we take a look at the number of businesses that are closing in this province, the number of businesses that feel very uncertain and very threatened by the economic climate because of some of the proposals of the provincial government, we take a look at the deficit, which is \$9.7 billion and probably will be there, we take a look at the projected doubling of the provincial debt to \$77 billion by the year 1994-95, we have to ask ourselves the question, can we afford to be this generous at this time? Can we afford to include within the wage protection program termination and severance pay? I guess the answer we come to is that we have a lot of difficulty with this.

I think we have to take a look at the small business person as well. When their company goes bankrupt, they are left oftentimes without their home as well, and they have no recourse to anything such as the wage protection program. They lose all their earnings as well, and it certainly would be difficult to guarantee every person in this province some sort of protection.

We are concerned that the fund is going to cost \$175 million in the first 18 months. That is going to expire, by the way, as of April 1992, and we are concerned that after that time this fund might be financed by a payroll tax, which we are very concerned about. That is going to mean more uncertainty and it is going to have more of an impact on the economic climate in this province.

We feel that workers are protected by the unemployment insurance system, and the minister has indicated that workers who have received their unemployment insurance premiums from the federal government may even have part of their employee wage protection program claim clawed back, because the federal government does deem severance and termination pay as income. In essence, if that were to happen, you would have the province paying the federal government. We certainly have many concerns

about the inclusion of the termination and the severance pay.

We are also concerned about the impact that Bill 116, An Act to amend the Employment Standards Act with respect to Notice of Termination, could have on the employee wage protection program. It would probably increase the amount of money that is paid out beyond the \$5,000 per employee.

I guess overall we are concerned that the taxpayers in this province are going to be saddled with a very large financial burden, and the question we keep coming back to is, can we really afford this at the present time? We are already taking a major step forward by offering these people, as they should be offered, the wages they have rightfully earned and are entitled to, but at the present time, given the economic circumstances, we certainly cannot accept including termination and severance pay. We are very concerned about the financial impact. We are concerned that it is going to cause more businesses to close. We are concerned about the difficulty that small businesses are going to have getting insurance, and they are going to be forced to close. We feel in time this could lead to fewer jobs in this province. I believe this government should be putting money aside to help create jobs, rather than possibly contributing to the further loss of jobs in this province, and we would suggest this amendment.

Mr Waters: I would respectfully disagree with Mrs Witmer on this. To start with, we have invested for a number of years on the other side of the fence as a government. We helped people go into business, and in these tough times I have had a number of business people coming to me asking for loan extensions and various other things to assist them. Not all of these people are necessarily going bankrupt. Some of them are escaping to the United States, they are escaping to Mexico. They are doing all of these nice and wonderful things and leaving their employees in the lurch.

I cannot see why as a government we cannot treat both sides equally and help both sides of the fence, the employee, when times are tough, as well as the employer. We are already helping many employers, as the government has historically done, and at this point I think it is time to start turning some of our focus to help the employee. After all, they are part of the Ontario mosaic. If I have worked for a corporation for 30 years and have some severance due me, I do not see why I should lose it. The creditors come in before me. I think there is a responsibility of the directors and of the employer and all of those involved with the corporation to give me my due as an employee, and I think it is long past the time that it should have been installed.

I really disagree with the fact that you just want to include pay and vacation pay on this. I think it has to go to the termination and the severance.

Mr Offer: I think we all recognize that this is a matter which we were going to have to discuss at the very earliest moment in this particular bill, certainly because of where it is positioned in the bill. Certainly I have thought about that particular issue.

I think we have to recognize that there were concerns raised by the business community. I think we also have to recognize that there is an Employment Standards Act, which talks about wages, vacation pay, termination pay, severance pay and the entitlement to those things by workers in particular circumstances. That is something which is legislated.

I see this particular section as stating whether an employee can access a fund, and it is not from the business community, but rather can access a fund and have the opportunity of having wages, vacation pay, termination and severance up to a particular limit satisfied.

I think we have to be cognizant of whether there is an impact on the business community. I believe there will be amendments further on that will limit the liability of the business community, the directors, etc, to the wages and vacation pay. That is already an amendment which the minister has indicated he will be bringing forward.

As such, I think the concerns raised by the community have been lessened. I heard a number of businesses come before the committee and clearly indicate that they recognize what their rights and obligations are. They came forward with certain concerns as to how that may be lessened, and we will be bringing forward amendments which talk to the small business community, which I believe made a very good series of presentations. We will be talking about an amendment which will exempt the enforcement mechanism of this bill from directors of the small business community. That is what I heard them say.

We will also be talking about amendments which will give to directors of business generally the right to argue reasonable diligence. We believe it is a right and responsibility of government that if it creates an enforcement mechanism which has the potential of holding people personally liable, it is obligated to make certain that those they have potentially held personally liable make argument against that.

As a result of what is now contained in the Employment Standards Act, as a result of amendments we will be putting forward in short order, as a result of the fact that the directors of business are not going to be personally liable under this particular piece of legislation, save as to wages and vacation pay, I believe the bill as it stands is supportable.

1030

Mr Klopp: After hearing that, I am perfectly clear.

Mrs Witmer: I appreciate the comments made by Mr Waters. There is no intent on our part to not make sure that employees are taken care of and given the money owed, because this bill actually is a very important step for the employees in this province. At present they do not have any protection such as the wage protection plan. We are simply suggesting that, given the present economic circumstances in this province, given the hardship many taxpayers are facing, we simply limit the definition of wages to actual wages earned, actual vacation pay and holiday pay, and not include the severance and the termination. Perhaps that should be considered at a later date.

One of our real concerns is the hardship this fund is going to create for the taxpayers in this province when we already take a look at the deficit and the provincial debt. The one thing we do not know is how the government plans to fund this program over the long term.

Yes, employers who employ these people should be reimbursing the employees their termination and severance pay, but that is not where the money is going to come from. It is going to come from the taxpayers in this province in many cases. Until such time I and our party know how the government is going to fund this program over the long term, I have tremendous difficulty with including termination and severance pay.

As of April 1992, which is just a few months away, the government is going to have to let people in this province know how this is going to be funded because that is where the change is going to take place. I regret we do not have that information at present, and I am very fearful of payroll tax. I believe it would contribute to more small business bankruptcies and more unemployment. I would just end by saying employees should be reimbursed.

The Chair: All those in favour of Mrs Witmer's motion? Opposed?

Motion negated.

The Chair: Mr Offer moves that clause 40b(2)(d) of the act, as set out in section 5 of the bill, as reprinted, be struck out.

Mr Offer: There are complementary amendments down the line and this really speaks to the regulatory power of the government to do two things: first, to increase the amount per claim from what is currently \$5,000 by regulation; second, to expand, to broaden the scope to what may be claimed, again by regulation.

We believe in the principle of the legislation; that is clear. Right now this money is being funded by the taxpayers and we all realize that we would like to get the answer as to what the long-term funding plans are by the Treasurer. I made that motion yesterday and it was defeated. I think that is important information. However, because of the defeat of that motion, because the Minister of Labour has been unable to provide us that information, we must realize clause (d) permits by regulation the \$5,000 limit to be ostensibly expanded to \$50,000 with the stroke of a pen.

I think we have an obligation to the taxpayers of this province to say that if there is to be any change to the limit of expenditure under this plan, it must go through the Legislative Assembly; it must be part of amendment to legislation; it must be part of public hearings. We must provide the forum where any changes in this area are sensitive to the concerns of the business community and the workers of this province.

Doing it by regulation takes away that safeguard. We were elected to recognize change, to analyse and examine it, to have public consultation and be responsive to that. Regulation does not allow that. It takes away from us some of the things for which we were elected. If we permit that motion to fail, then we are allowing government, cabinet by the stroke of a pen to take away one of our functions

PPs, to take away the opportunity for the general public, business, labour, to input into these decisions. I believe it is absolutely essential for us to make certain that any change to the monetary amount—and we know how this can happen—and to the length and breadth of what can be covered, strikes at the very principle of the bill.

We have an obligation to make certain those changes go through the legislative process. I could not believe the government members could vote against accountability, consultation and taxpayer representation. If you vote against this motion, that is exactly what you are doing. I do not believe you will do that and so I ask that this motion be supported.

Mrs Witmer: We will be supporting the motion by Mr Offer and I would agree with many of the points. One of the things taxpayers across this province are very concerned about is the increase in taxes. We believe that when there are any changes to increase the ceiling of this program or to add additional components to the compensation package, there is a need for complete and full public scrutiny into any spending increases that are going to take place.

We need to give adequate notice to the public. We need to consult with the public. We need to hear from them before we make any changes that are going to impact on the amount of taxes the people in this province pay. We need to be accountable to our taxpayers and so I believe there is a need to allow full public debate on any changes that take place. We will support the amendment.

040

Ms S. Murdock: Voting against this motion is in no way a vote against accountability, in my view. "Such additional payments as may be prescribed by regulation" specifically relates to what we heard during the public hearings in terms of the difference of the kind of employee construction worker is. There is nothing in this bill that stands without that regulatory power allowing the construction worker to have the different kinds of wages he receives to be covered.

They explained it in great detail here during the public hearings and clause (d) does allow for the negotiations, as had said when the clause-by-clause opened this morning, that have been ongoing since the public hearings, just trying to get the wording right in terms of how those regulations are going to actually work and not provide extra benefits or things beyond the scope of this bill.

The other thing is that we also heard during the public hearings from the ladies' garment workers, who also are not able to appeal under this legislation as it stands. With exceptions such as clause 40b(2)(d), we will also be able to negotiate and discuss how they could be included. That is why "additional payments" does not mean what was stated earlier, that we can move from a \$5,000 cap to a \$50,000 cap. It means that if a payment from whatever group we are talking about can be considered a wage under this definition, which is what this section is, then it would be included under a regulation and it would not have to then go through the whole legislative process, which is, as we are discovering, an arduous one.

Mr Klopp: I am speaking against the motion too because of the points my colleague brought out about accountability and circumventing the system. There are two ways, regulation and full-blown hearings like this, and my feeling is that if you do not have the backing of the business community or labour, you are going to hear about it in the public process, whether it is tax dollars immediately or whether it is through the business people. Those people are voters and they will definitely mount quite a lot of dust and dirt thrown your way if you try to do something that is totally ridiculous. Mr Offer pointed out that he has experience. If that is the opposition party's experience and that is why they do not want regulations, I do not think you should paint us with that brush. I would have concerns too probably.

This is not going to create the holus-bolus problems. If there is a cabinet that wants to spend, as you pointed out, the \$5,000 to the \$50,000 with a stroke of a pen, I am sure if the business world does not complain, it must have done some good consulting, or the labour people must have done good consulting and that is what the people wanted, whether they are taxpayers or whether it comes out of whatever fund it is. There are enough checks and balances with those problems, which I was worried about too. But my sense is that people do not let you get away with those things that easily, and because of what my colleague pointed out on trying to make this thing as fair as possible for people like the garment workers, I think in this particular instance the checks and balances are there.

Mr Offer: I am dismayed to hear that the democratic process has been referred to by members of the government as arduous. I would have thought that is why we were elected, to deal with these things. The fact of the matter is that this particular clause talks to the words "additional payments." It is not specific. It has the potential of being applied in various ways down the line and I do not think we as legislators should allow that to be determined by regulation. I think we have an obligation that if there is to be a change to the legislation we should be listening to the people, that we should take this to the Legislature, that we should have hearings on the matter. I think this bill is a clear example as to why we need legislation.

The bill as first introduced, I guess, might have been thought of as being the result of some great consultation, but what happened after it was first introduced into the Legislature was a hue and cry throughout the province as to what this means. The government did not understand that, so what did it do? They announced amendments to the legislation. This is an example as to why you need legislation. What if that could have been done by regulation? The difference is that the hue and cry would be talking about areas that are already the law. But what has been able to have been accomplished because it was through legislation is that there has been some receptiveness to some of those concerns.

What we have to do is make certain that the task we were elected to do is able to be accomplished. It cannot be done through regulation. We are not talking about anything specific here. We are not talking about, as the briefing notes indicate, coverage of benefit contributions in the

construction industry. That is an example of what an additional payment may be. It is not what this particular subsection talks about. This particular subsection does not talk about coverage of benefit contributions in the construction industry. It talks about additional payments, and that is not limited to the construction industry.

I believe we have to be sensitive to what it is we are doing here. The only way we can do that is not to just shuck off our responsibility and say, "Cabinet, you sign it, and we will hopefully deal with the ramifications of that afterwards." This is much too important, this bill. We have an obligation and responsibility to safeguard the continued operation of the bill in the way in which it was first announced. That announcement, as we all know, was in October, and we want to make certain that it continues to operate in the same way and in the same vein as at its first announcement.

By voting against this amendment, thereby allowing additional payments as prescribed by regulation, we as legislators lose control, and that is something we should not do. We must be accountable to the people who elected us. By voting against this amendment, you are saying no to that.

The Chair: All in favour of Mr Offer's motion? Opposed?

Motion negated.

The Chair: Mrs Witmer moves that subsections 40b(4), (5), (6) and (7) of the act, as set out in section 5 of the bill, as reprinted, be struck out.

Mrs Witmer: This actually is a companion amendment to the first amendment that we made, and certainly the rationale is the same as I put forward at that time.

Motion negated.

1050

Mr Offer: The opposition and third party released their amendments to the government yesterday and I am sure in that period of time government members have had an opportunity to review the amendments. Is it the intention at this point in time that the government members are going to support any amendment proposed by either the opposition or third party?

The Chair: Mr Offer, I appreciate your interest, but surely you cannot expect these people to indicate how they are going to vote on a motion until they have heard the debate which would inevitably flow, and some of it could be more persuasive than others. Now, come on.

Mr Offer: I was just curious.

Mr Klopp: Maybe he knows what he has been arguing is not worth arguing.

The Chair: Shall subsections 40b(1) through (7) carry? Those in favour? Opposed? Subsections 40b(1) through (7) carry.

The Chair: I am sorry to interrupt you, but the clerk is going to distribute a replacement page that supersedes the current page in your instructional manual regarding subsection 40e(1).

That was just an announcement. Section 40c.

Ms S. Murdock: Section 40c is the appointment of the program administrator by the Minister of Labour and the powers and duties exercised by the minister, the authority to delegate, as well as bringing any legal proceedings that may be necessary in order to perform the functions of the job. It is an administrative function, basically.

The Chair: Shall subsections 40c(1) through 40c(4) carry? Carried.

The Chair: Ms Murdock, section 40d.

Ms S. Murdock: Section 40d is that the program administrator is not compellable as a witness and in testimony in civil proceedings, that he cannot be called. There was much discussion during the public hearings on the compellability and I am sure I will be hearing about it, but that is what that section does.

Mr Offer: Just a short note on that: I did not hear in the public hearing process a great deal of discussion on this whole issue of compellability. I would like to get some indication as to the necessity for that. The reason I ask is that we will be proposing an amendment which will incorporate some of the concerns of business in terms of being able to use due diligence as a defence, as one example. I am concerned that this type of provision may hinder the full expression of the defence of due diligence, and would like to get some reaction to that.

Ms S. Murdock: The program administrator cannot be compelled to appear in a civil hearing. The powers can be delegated. Now, it is usual that employment standards officers can and do so voluntarily appear in civil matters and will continue to do so. This act is not going to change that. Forgive me, maybe I am missing something, but I do not see how it would directly hinder a due diligence argument by a director.

Mr Offer: Currently, is there a compellability provision in the Employment Standards Act?

Mr Jenkins: There is a non-compellability provision in the Employment Standards Act for employment standards officers.

Mr Offer: There is right now?

Mr Jenkins: Yes. It is a non-compellability provision.

Mr Offer: My question is, does the non-compellability provision currently in the Employment Standards Act mirror the provision of section 40d?

Mr Jenkins: Not entirely, no.

Mr Offer: May I be informed as to where it deviates and why?

Mr Jenkins: The non-compellability clause in the Employment Standards Act at present is subsection 45(3). It reads:

"No employment standards officer is a competent or compellable witness in a civil suit or proceeding respecting any information, material or statements acquired, furnished, obtained, made or received under the power conferred under this act except for the purposes of carrying out his duties under this act."

The last phrase, "except for the purposes of carrying out his duties under this act," does not appear in section

Od, so you cannot say that the two are mirror images of each other. The reason that the last phrase, "except for the purposes of carrying out his duties under this act," does not appear in section 40d is that it was felt that in most circumstances the program administrator would not be testifying at a proceeding personally, that the people who would be testifying pursuant to their duties under the act would be the officers who had made the decision concerning the substantive entitlement under the act, that it is more appropriate to have "except for the purposes of carrying out his duties under this act" in the non-compellability clause concerning officers and that it was not really appropriate for the one concerning the program administrator.

Mr Offer: The provision speaks not just to the program administrator but also to any person employed at the ministry or, in fact, to any person to whom the powers and duties have been delegated. Does that not encompass all of the people who had any play in the determination of liability?

Mr Jenkins: No, it does not. The program administrator's powers of decision are quite limited and the substantive assessment of the entitlement would rest on the officer who prepares the order. In determining whether or not to issue an order against a director, the officer would be the one who would consider whether various defences, any, applied. There is no such defence in the bill at present.

Mr Offer: Okay, thank you. That is quite helpful. So what we are talking about with respect to the program administrator is the person who administers the program. We are not talking about the individuals who would determine whether a particular director or whatever is actually able.

Mr Jenkins: That is right.

Mr Offer: Okay. So long as that is our understanding, we have no problem with it.

The Chair: Shall section 40d carry? Carried.

100

Ms S. Murdock: I would ask, Mr Chair, that section 40e be stood down. My ministry staff has advised that there is a further consideration. It has been pointed out that the way one of the sections is worded could be misunderstood.

The Chair: Is there unanimous consent?

Agreed to.

The Chair: Section 40f, subsections (1) through (3).

Ms S. Murdock: Mr Chair, 40f is with regard to the construction workers. Basically, the construction workers have to apply if moneys are not paid to them through a construction lien. They must process that lien before they are eligible to apply under this fund, under section 40f.

In subsection 40f(2), if the program administrator is satisfied that for some reason the employee was not aware of the right he had to the construction lien or that he must do it within a 45-day period, then under those special circumstances the program administrator can allow an extension of the time period for application. And if an employee who is entitled does not go through the lien process and money is paid to that employee under the fund, then the

program administrator is entitled to go to the lien program to be repaid for the portion of money that can be recouped.

Mr Offer: Just to be clear, because there were some very good presentations made on this particular point, basically what we are saying is that a person who may be able to register a lien claim need only register and need not have to go through the next phase of perfecting the particular claim. Is that the understanding?

Ms S. Murdock: Yes. The employee must file a lien claim and then apply into the fund.

Mr Offer: I do not have the first bill, but is this an example of the point that Mrs Witmer brought up at the beginning? This particular amendment is one which did not appear in the original bill and was not the subject matter of the minister's statement to the Legislature on amendments to the bill.

Ms S. Murdock: In the first bill—it is on page 3—the section on lien claim preservation and enforcement has been altered. In order to be eligible for this fund, they were not only going to have to preserve their lien claim but were going to have to have it enforced. In some instances that can take much longer than the two-year limitation period. So therefore that was raised in the House in debate and subsequently amended in the reprint.

The Chair: Shall section 40f carry? Carried.

Ms Murdock, section 40g. Is that self-explanatory?

Ms S. Murdock: I would think so, but I do not want to make that presumption.

The Chair: Are there any questions or persons wanting to debate these very self-explanatory subsections (1) and (2) of section 40g? There being none, shall section 40g carry? Carried.

Section 40h.

Ms S. Murdock: Section 40h concerns settlement or a compromise of wages. This section ensures that workers who make a settlement with their employers are bound by the terms of the settlement if the employer has paid the amount agreed upon, if the money has been paid into trust. They are bound by it.

Mr Offer: Are we on section 40h in whole or are we on subsection (2) also?

Ms S. Murdock: No, subsection (1). Subsection (2) is where there has been an agreement but the money has not been paid by the employer. Then the full amount of up to \$5,000 is payable by the fund. The plan would pay the compensation up to the cap if the employee were eligible to receive that amount. The average rate paid is \$4,200. They may never have to reach the cap.

Mr Offer: There is no question in section 40h that the maximum that can possibly be paid out would be the \$5,000, is that correct—that the cap and the limit will always remain in force?

Ms S. Murdock: Right. To clarify that, it does not anywhere in there, obviously, say \$5,000. It just says the maximum amount recoverable.

The Chair: Shall section 40h carry? Carried.

Section 40i.

Ms S. Murdock: Section 40i is the maximum recovery provision. The intent of the section is to cover the inflationary aspects. It is a \$5,000 cap at present.

The Chair: Mrs Witmer moves that section 40i of the act, as set out in section 5 of the bill, as reprinted, be amended by striking out "\$5,000 or such greater amount as is prescribed" in the fourth and fifth lines and substituting "\$4,000."

Mrs Witmer: The reason for doing this, of course, is that we feel the maximum compensation should be \$4,000 at the present time, given the present economic circumstances. This is also the amount that parallels the current maximum liability that an employment standards officer can order an employer to pay. Also, if we follow through in our first argument in believing that only outstanding wages and vacation pay should be covered, since it has been indicated that only about 10% of the money that is going to be given to employees will be for wages and vacation pay, we feel that this amount will more than adequately cover the amount of the outstanding wages and vacation pay.

Ms S. Murdock: It has been clearly stated I think by both the ministry and then the minister and the deputy minister when questioned by the committee that the average rate of payment under the employment standards branch, including termination, severance and so on, is \$4,200, which is more than the \$4,000 presently capped in the present ESA. The \$5,000 would certainly cover that. Should the federal government ever put into place Bill C-22, the province would apply for the \$2,000 cap therein to be reimbursed into our fund. We felt that the \$5,000 left enough leeway in terms of an average that it was a more fair and equitable rate.

The Chair: All those in favour of Ms Witmer's motion? Opposed?

Motion negatived.

1110

Mr Offer: Mr Chair, I have an amendment.

The Chair: Mr Offer, if I were to rely on rulings made by Chairs of committees that I was an opposition member of, I would rule this motion out of order because it replicated the contents of a previous motion. But I do not rely on those and I am not ruling this motion out of order.

Mr Offer: If you want to rule the motion out of order, certainly as a member I will have no alternative but to listen to your rulings.

The Chair: Mr Offer moves that section 40i of the act, as set out in section 5 of the bill, as reprinted, be amended by striking out "or such greater amount as is prescribed" in the fourth and fifth lines.

Mr Offer: What we are doing here is continuing the debate as to whether, by regulation, a government should be able to increase the limit of \$5,000 to whatever limit it feels is appropriate without the benefit of such a change going through the Legislature, without the benefit of consultation, without the benefit of committee hearings, without the benefit of full debate and without the benefit of

being accountable and accessible to the people, business community, labour and taxpayers of this province.

I believe that one of the things that has been clear in this bill is the \$5,000 figure. People may have, as a result of that, taken a position on the bill. I believe that because the \$5,000 figure has ostensibly been derived as a result of some discussion on the average type of claim and is part of legislation already, it must logically proceed that any change to \$5,000 must also be part of legislation.

If the legislation read that the maximum amount of compensation is that amount, as is prescribed and on voted in favour of it, then logically one could argue that any change must also be, or could also be, by regulation. But the legislation does not say that. The legislation states the number \$5,000. Logically, in keeping with the bill itself, any change to that, any new number, must also be by legislation. This section says, first instance, \$5,000 is legislation; second instance, somewhere down the line some other number is by regulation.

My argument is, if it was in principle good enough for the Minister of Labour to announce \$5,000, then surely it will be good enough for the Minister of Labour, in the event he or she so wishes, to announce a change by legislation. Whether one agrees with \$5,000 or not is not the issue here. The issue is that it is a number by legislation, so any change must also be by legislation.

Another issue is, what are we doing here if we cannot have a say in a change in this figure? What are we doing if people, business, labour organizations say that the number is wrong? What response is it of us as legislators to say "Well, you know, I don't have any say in that because it's by regulation"? And they say, "Well, you know, this means a big thing in our ridings." What do we say to those people who come to us and say, "You know, this really has an impact"? Do we say, "Well, I'm sorry, it's by regulation. I voted in favour"? Well, I am not going to vote in favour of that. If the Minister of Labour said it was good enough to put \$5,000 in legislation, then we as a committee should say it is good enough that any change also be by legislation.

If you are going to be consistent, then this is where you are consistent. If you are not going to be consistent, then you vote against my motion. It will send out an incredible negative message over a principle that we certainly agree with, but we cannot allow a change to be made by regulation when its initial figure is by legislation.

We have a choice here. You have a choice. You can be consistent or not. You can be accountable or not. I hope you will vote in favour of my motion.

Ms S. Murdock: I appreciate the lesson on democracy and how regulatory changes are made, but we are into the same basic argument that we had before in terms of whether or not something should be legislated or whether something should be able to be changed by regulation.

I clearly stated on the record that the intent of section 40i is the inflationary aspect and not to change the \$5,000 sum into some larger amount at a later date. I do not believe, in this democratic system that we have, that members of provincial Parliament, elected by the people of this province, would go in, whether they are government members or not, and sit on the legislation regulations cabinet

committee; would, as decent and honest human beings, look at a regulatory change and indiscriminately, without thought to what would happen to the constituents in their riding and throughout the province, make the kinds of dramatic changes that are intimidated by the previous speaker. The regulatory change required here, if it is required, would be on the inflation basis alone.

Actually, listening to the basics of Mr Offer's argument, it sounds quite reasonable and logical. But that is reasonable and logical, I believe, if you also believe at the same time that any government in power is just willy-nilly going to make changes and increase a \$5,000 amount to some dramatic amount at a future date. I do not believe that is the way of the world.

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Mrs Witmer: We will support this amendment. Again, I guess, one of the concerns we have is about the lack of long-range planning as to what is going to happen with this bill. How is it going to be funded? What type of maximum will there eventually be? What is the cap? Certainly I believe that if there is going to be any public spending in this province, there is a need for public consultation and complete scrutiny. At the time, I think what this bill does by saying "such greater amount as is prescribed" is to create uncertainty. It certainly does not allow employers to plan for their future, because they have no idea what increases are going to occur or when that is going to happen. So I believe there is a need for accountability and complete public scrutiny and consultation.

Mr Waters: I look at this, and with it being the discussion over regulations I have some sort of a problem with what I am hearing from the other side. To start with, even before we got into the public hearings, from what he had heard from the members across in the House and also from the public, the minister altered the bill, because he had listened to them. I would hope this minister and ministers in the future would be listening to the public and would come down with fair decisions, as he did.

I see this as a way of just tying up, should there be in the future a need to either go up or down. The minister would still be hearing from the public and would hopefully be making his decisions on that. The public made itself very clear. That is why we had the amendments before we went into hearings. The public, through their elected representatives for the most part, made the point that they thought there was something unfair about the original proposed bill. Here we are now and you are saying that the system is not going to work in the future.

I have doubts about that. I feel that system would work. We have friends on both sides. I have friends who are in labour, naturally—I came out of that organization—and I have friends who are in business, and both of them were out here. I think we came down with a fair decision, and you have to allow some discretion within that. There will be consultation, believe me. If we wanted to raise it, you people would be knocking on the door and so would all my business friends. If we wanted to drop it, labour would be knocking on my door. So I think there is a certain

amount of protection there, and the members are allowed to work.

Mr Arnott: I would just like to indicate that I intend to support this amendment as well. The parliamentary assistant's assurance that it is only an inflationary factor and that is the only reason behind it is one I just do not accept, and I cannot accept her explanation. It is not set out specifically that an inflation factor will be included. I have grave concern that it will be increased significantly over time. I certainly concur with what has been said with respect to ensuring that these considerable new exposures to the taxpayer be brought before the Legislature so that we all have an opportunity to speak to them, to debate them, to discuss them, to bring forward the views of our constituents, rather than to have the minister sit there with his civil servants and with the stroke of a pen increase the exposure to the taxpayer.

Mr Klopp: I just want to back up what my colleague Mr Waters said. I think not only opposition members but even members of the caucus made points. He brought up his friends in business, and I too had people, as a small business person myself. I think the checks and balances under this particular proposal are fine.

You can argue both sides. I got into government, and there are things which are regulated and things which are legislated. The argument is that, trying to get them changed, we have to go through the legislative body and it takes too long. I have heard them say, and I have even heard former ministers who now are on the opposition side say, "Yes, if it would have been regulated, I could have changed that because it made sense, but it took too long." You can argue both sides. I think there are good checks and balances. I believe there are 130 members of Parliament at the present time and the majority can raise enough good arguments to have things changed or retracted. So on that, I have to speak against your motion.

The Chair: Mrs Witmer. I trust you are going to be responding briefly to points that were raised, rather than repeating what you said initially.

Mrs Witmer: I am going to. There was a concern that people were going to be listened to. I would just remind Mr Waters that the employer groups that appeared before this committee all indicated that they opposed the ability of the government to increase the program ceiling by regulation. They believe future changes should be made by amendment to the act to allow for full public debate. So I guess that was one of the reasons I initially asked what amendments the government had brought forward as a result of the public hearings.

Mr Offer: Just shortly, I am absolutely unconvinced by the response by members of the government. Mr Waters spoke about increasing or decreasing the amount. The legislation does not speak to that. It only speaks one way, and that is greater. It does not speak to change, it speaks to increasing the amount. I have no doubt that this particular section has nothing to do with inflation, because if it did, it would say so. It has to do with increasing the base amount of \$5,000 to another amount. I believe that must be done by legislation. I do not know why members of the government

would feel at all reluctant to have such a crucial aspect of the bill be the subject matter of legislation. The \$5,000 initial figure is the subject matter of legislation. Why cannot a change to that also be the subject matter of legislation? Do we not have an obligation? Should we not have a guaranteed opportunity to debate any change to that basic amount? Legislation gives us, as members of provincial Parliament, that opportunity. It cannot be changed without at least giving us the opportunity to debate that. Regulation takes that away from us.

Today we are talking about taxpayers' dollars. Somewhere down the line it may not just be taxpayers' dollars. I think we have to provide, as members of this Legislature, a guarantee to ourselves to be able to debate any change. That is all we are asking for in this case. We are not saying the \$5,000 should be \$2,000, that the \$5,000 should be another number; not this motion. What we are saying is that any change to it should give us a guarantee to debate it, to talk about it. I do not care what legislative committee you prop up; regulation does not give you that guarantee. Legislation does.

If you say no to that, I know you are saying no to every other amendment that both the opposition and third party are going to propose. I know that is what it means. It means you have discussed our amendments last night and you have said no to every one. If you cannot agree to this one, which does not change the bill in any real way—what it does is to guarantee the future changes by legislation—then I know you must have had some sort of subcaucus meeting and said: "We're going to just say no to all of their amendments. We will listen politely, but we will in the end result prop up and we will have six members against whatever else goes." Incredible.

So I ask those who have spoken to reconsider. This motion should pass because, by voting against this motion, you are voting against the principle that your minister himself announced. He said he is unafraid for the \$5,000 figure to be debated in the Legislature. Why can you not follow his lead and say, "And we're unafraid that any change to that also be debated in the Legislature"?

The Chair: Thank you. All those in favour of Mr Offer's motion? Opposed?

Motion negatived.

The Chair: Shall section 40i carry? Carried.

Ms Murdock, Section 40j.

1130

Ms S. Murdock: Subsection 40j(1) is when compensation becomes payable. It is basically the process of the claim. Subsection 40j(2) is apportioning the amounts by the program administrator for each of the four types of the covered payments. That is basically it for the apportionment breakdown for federal purposes. Subsection 40j(3): Upon approving compensation to the employee, deductions are made, again for the purposes generally of the law of Canada but also the law of Ontario.

The Chair: Shall section 40j carry? Carried.
Section 40k, Ms Murdock.

Ms S. Murdock: Compensation during employer-initiated appeals: Where an employer initiates an appeal

against an order to pay wages further to section 50, compensation from the plan will not be paid until the referee hearing the case rules that the workers are entitled to payment under the order to pay and the employer does not pay. In subsection 40k(2) compensation in appeals initiated by the employment standards branch may be paid after the referee determines wages are owed. I think that is pretty clear.

Subsections 40k(3) and (4) are interim compensation during hearings, specifically instances where if it is determined that only one portion of the eligibility for payment is disputed, the undisputed portions can be paid pending decision on the disputed portion.

The Chair: Shall section 40k carry? Carried.

Ms S. Murdock: Section 40L is orders to pay where the worker initiates an appeal. If a worker is appealing an employment standards branch decision not to issue an order for unpaid wages, he may receive fund compensation following an adjudicator's decision to allow the claim.

Mr Offer: Might I just get a clarification as to what that means? Is this where there has been an initial determination of not to pay and there is some sort of a—

Ms S. Murdock: Employee appeal.

Mr Jenkins: Where the officer initially determines that the employee is not entitled to the wages, the employee has a right of appeal, which is heard by an adjudicator under section 49. If the adjudicator rules in the employee's favour, then the program administrator may approve compensation from the fund at that point in time.

Mr Offer: You said "may" approve. Are they not bound to approve compensation? What would be the reason they would not?

Ms Muir: At the point at which the adjudicator decides the person may indeed have some entitlement, an order to pay would be issued against the employer, if there is an employer. If there was no employer or the employer was unable to pay, then the administrator would make a decision about paying out compensation from the fund. So it is not automatic. It can be discretionary, because first an order to pay would be issued against the employer.

Mr Jenkins: In other words, the employer might comply voluntarily. There may be no need to pay out compensation from the fund, so that is why the word "may" was used.

Mr Offer: Okay. The point I am bringing out is to be absolutely certain there was no provision in the particular section which would permit an order to pay during the hearing of the matter, prior to its final determination.

Mr Jenkins: Do you mean like an interim payment from the fund?

Mr Offer: Yes, where a right of appeal or review has not yet expired. I think we want to make certain that the legislation, though giving the workers the right, also makes certain that an order to pay will not be made until, first, a review has taken place and, second, if there has been an appeal, that appeal has been heard and determined. All we want to do is make certain that an order to pay will not be processed until all of the individuals involved in the

matter have had their opportunity to bring forward the claim and any appeal period has expired or been heard and disposed of.

Mr Jenkins: Yes. There is no authority in 40L for interim payments during the section 49 hearing. The hearing would have to be concluded before the administrator could approve a payment from the fund.

Mr Offer: Is there a provision whereby a matter may not just be on the basis of wages, may be also on the basis of wages and vacation pay, termination and severance? Is there a provision whereby the matter, for instance, of wages has been at one point heard and there are other areas that still have to be heard, but an order can be sort of pared off—"Okay, pay out the wage order now"—before the full matter has been decided?

Mr Jenkins: In a section 49 hearing specifically?

Mr Offer: Yes, in any hearing under this bill.

Mr Jenkins: In section 50, which is the employer appeal hearing, there is the provision in the bill to approve interim payments where certain issues are disposed of or agreed upon prior to the conclusion of the hearing.

Mr Offer: That is the only place in the legislation where that might happen?

Mr Jenkins: That is right. In section 51 hearings as well, but not in section 49 hearings.

Ms S. Murdock: Just on that point, subsection 40k(3), which we just passed, is for the section 51 hearings, but your point is just relating to the section 49 hearings. Am I correct in understanding your question, Mr Offer?

Mr Offer: My point relates to any hearing which is under the wage protection plan, whatever section you want to refer to it as. If there is any hearing which deals with whether an employee is entitled to wages, vacation pay, termination and severance, and dealing with the entitlement of that particular person to the wage protection plan, I think it is important that we all recognize that there will have to be a decision on entitlement and that if there is an appeal or a review of that decision, that will proceed prior to the payment of any dollars. I imagine that would be just self-evident.

Mr Waters: But on that, there was one scenario brought up during the hearings where there could be a partial payment already; in other words, the employer has agreed to a certain amount and the employee is arguing the rest. Surely they would be entitled to that first amount.

Mr Offer: I appreciate that. That is not the question I am asking, because that presupposes agreement between employer and employee. I am working on the basis that where there is no agreement, there is the necessity for a particular hearing or an appeal. I think we all recognize that, though very much in favour of the principle of the legislation, we also want to make sure there is no provision in the bill that would allow any payment to be made prior to its final determination.

Ms S. Murdock: Under section 49, which is what we are talking about here under section 40L, no, you are right. Your fears may be allayed.

Mrs Witmer: But we did just pass it under section 40k.

1140

Ms S. Murdock: Yes, you did under subsection 40k(3), because this is where an ESB officer has already decided that you are not getting any money, you are not entitled, and the employee appeals, which is different from the other section, 40k, under a section 51 application, which we have not gotten to yet. It is not the same set of circumstances. So the answer to Mr Offer's question is no.

The Chair: Shall section 40L carry? carried.

Section 40m. Ms Murdock, is that self-explanatory?

Ms S. Murdock: Yes, I guess, except to say that it has been put in there especially for cases of obvious fraud where the intent is to defraud the fund.

Mrs Witmer: I would like to get some more information about the overpayment policy that the Ministry of Labour is going to be developing. There were no details last time. How is this going to take place?

Ms S. Murdock: That has been discussed. A policy is being put in place. Basically, I think it is safe to say that the previous policy of the government, for instance, in the Ministry of Community and Social Services, has been that if the error on an overpayment is made through the ministry bureaucracy, in computation or whatever, the error is not the fault of the recipient and payment is absorbed by the ministry. I have made my position on this very clear because I am a firm supporter of that in terms of workers' compensation overpayments as well. When you get into large bureaucracies, you cannot expect that the people who are not involved in the rules and everything else that happens within a government know it all. So the policy is such that if the error is one of government or one of bureaucracy, then overpayments in that regard would not be—what is the word?—sought after. But in cases where it is evident that fraud has occurred or collusion of some type has occurred and the attempt is definitely to defraud the fund, and obviously where it is obvious, then that is where section 40m would recover an overpayment. It is an opportunity to try. There is always somebody who will try.

The Chair: I wonder if any of the staff want to expand on what Ms Murdock had to say.

Ms Muir: I think it is quite clear.

Ms S. Murdock: They agree with me.

The Chair: Or perhaps provide some elaboration for the assistance of the committee?

Ms Muir: Perhaps what we could add is that a regulation will be prepared that will set out criteria that would be used to govern overpayments so that it will be quite clearly and publicly known what the policy is.

Mr Jenkins: I think we would want to consider such factors as whether recovery would create an undue hardship on the employee, in addition to other factors as well.

Mr Offer: I am just wondering where the legislative entitlement to create a regulation exists, that basis.

Ms S. Murdock: We have not covered that section yet.

Mr Offer: Project me forward.

Ms S. Murdock: That is section 65.

The Chair: Shall section 40m carry? Carried.
Subsections 40n(1) and (2).

Ms S. Murdock: It is the top-up of compensation paid to workers where the plan initiates subrogative proceedings, third-party garnishment certificates, directors' liability proceedings on behalf of a worker who is owed wages. The worker is entitled to receive any amount which exceeds the compensation he or she has received from the plan.

The Chair: Shall section 40n carry? Carried.
Section 40o.

Ms S. Murdock: Again, it is subrogation of the plan administrator to the rights of individual workers. The administrator will be able to exercise any legal rights of the individual to recover wages owed in other legal matters.

Mr Offer: Just one second here. Under 40o, the program administrator basically is able to get the rights of the employee and take action as the administrator sees fit. Can I ask how we get that section 40o with that old non-compellability clause of 40d? I cannot recall what section it is now. I am asking just for my information. You are permitting the program administrator to take action and also allowing not being required to testify in a civil proceeding. I am just wondering whether you might help me out on it.

Ms S. Murdock: If I may, basically subsection 40c(4), which we have already passed, in the name of his or her office may bring any proceeding—

Mr Offer: No, 40d is my question.

Ms S. Murdock: No, earlier, and you said how it matches up—"may bring any proceeding he or she considers necessary in relation to the program" and may respond to any proceeding in that name. It is in the name of the program that the administrator goes. If money has been paid out of the program to the employee, then the administrator, through the program, can apply to whatever third party if funds are available or entitlement is there. The administrator can apply for that payment to be made back into the fund. I think that power was granted in section 40c.

Mr Offer: I would like to get some clarification on this particular point. I am not certain I agree with that explanation. Just help me out on that. The subrogation of rights is different from bringing something in your own name. Subsection 40c(4) talks about bringing something in their own name. Section 40o talks about being able to bring something as a result of rights which accrue to an employee. My question remains, if I can get an explanation, how that gels with section 40d, that non-compellability section.

Ms S. Murdock: I misunderstood the original question. Section 40d is compelling the administrator, as a witness to a particular order, to pay. Section 40o is not the same thing. You are applying for moneys to a third party under different pieces of legislation, but 40d is taking the person of the administrator and compelling him to be a witness in a matter under the Employment Standards Act or before another court in a civil proceeding. It is not

anywhere the same thing. Laura is legal counsel; maybe she can explain it better than I can.

Ms Hopkins: The provision about non-compellability speaks to the program administrator as a witness in someone else's lawsuit, in a suit the administrator is not a party to. In section 40o, we would be dealing with lawsuits the program administrator is a party to.

The Chair: Shall section 40o carry? Carried.
Section 40p.

1150

Ms S. Murdock: Interest may be paid or collected on money owed. I think it is pretty clear.

The Chair: Shall section 40p carry? Carried.
Section 40q.

Ms S. Murdock: Section 40q is specifically agreements to artificially increased fund entitlement. This is the collusion aspect and it is directly spoken to in section 40q.

Mr Offer: I am wondering whether ministry staff or the parliamentary assistant might be able to inform us as to how that decision may be arrived at. What is going to kickstart that type of process of inquiry, and what rights do the people have who are party to that in dealing with the issue at hand?

Mr Jenkins: Decisions of the program administrator are exempt from the Statutory Powers Procedure Act, so there would be no formal hearing held. The principles of natural justice would still require that evidence be heard viva voce perhaps, or through written submissions, but there will be no formal hearing held. The program administrator will just make the decision on the basis either of interviews with the people or written submissions.

Mr Offer: I do not think we have passed that SPFA exclusion yet, but as a result of that we might want to think about it. There is going to be a very serious allegation made in order to kickstart section 40q. The allegation is going to be that the employer and employee have jacked up some sort of agreement to get moneys that might otherwise not be justified. I wonder whether we should make certain how that happens and surely make certain that there is going to be a hearing process in this matter. We are talking about matters and allegations which are very, very serious in nature.

Ms S. Murdock: I am hearing two concerns from Mr Offer, the first one being, how does one determine whether there is collusion occurring? Basically, when the employment standards officer goes in to examine the books and so on to determine whether employees are entitled to whatever entitlement they have, if there is some hint that the books are cooked—I know that is the term—or that ESO has an indication or a feeling or just something that would say there is something wrong here or that it is not sitting right, the administrator then has the power to question that. There are no hard and fast criteria here; it is simply going to be each and every case in its own situation.

Having said that, if the administrator says, "Aha, you're not going to get paid this; you're going to get paid that lesser amount because we suspect collusion," and if as the employer or employee I do not like that decision under

the legislation we are discussing, now I have the right to appeal. So there is that appeal process already within what we are doing here now. There is none specifically related to a collusion aspect, but there is if you disagree with the order to pay and the order to pay amount is not correct in your mind. If the employer says, "No, that's too much," or, "No, that's too little," then it can appeal that decision.

Mr Offer: I certainly have no problem with having the administrator being able to make certain there is not that type of problem, but I do not know that the resolution of the matter is met because the dollars can be reviewed. There is a more serious issue that comes before: whether it should be \$2,000 or \$5,000. Ms Murdock's response was: "Well, there's an agreement and \$5,000 was the amount of money. The administrator should have the right to say, 'I think that looks a little curious to me,' and as a result of the review come down and say it should be \$2,000." I guess they have every right to do that, but they are not just talking dollars; they are now saying there was some sort of arrangement made.

I think the parties may want the right to have that matter argued. They are being called crooks. Is that not what they are being called here under this legislation? Should they not have the right to argue that is not the case, and should the legislation not provide the opportunity for parties to argue that is not the case, not to carry that stigma? This legislation does not allow that. This legislation says, "It's \$5,000; we don't like the deal so it's really \$2,000," but they are not talking about it. They are talking about people who may say, "We think you're wrong and we don't want to be labelled or stigmatized by what is inferred there."

By taking away that hearing process, you are leaving the people to carry that stigma around. You are leaving them without the opportunity to argue something, and the administrator may be wrong. You are not giving them any opportunity to clear their name and to clear what is a definite stigma that will be attached. I think we have to have that in the legislation. I am not against the administrator being able to look behind matters, but if we give the opportunity to the administrator to look behind those matters, as the administrator should, then we also have to allow the parties to that to argue their case. That is where this does not hold up. They do not get their hearing.

Ms Muir: They are not going to get a requirement for a hearing before the program administrator makes that decision. They are going to consider all the evidence and provide the parties, just on the grounds of natural justice, with an opportunity to present each side of the argument. Presumably, although there is no formal requirement to have a hearing on the matter, there would be an opportunity for the parties to make their views known.

Mr Offer: Just on the basis of fairness and equity and everything that sounds right, should there not be that? Should the legislation not have that, if there is the possibility of an administrator saying that this particular arrangement is no good for not the best reasons in the world? Whether they exercise it will be up to them, but should the parties not at least have, in clear form, the opportunity to

come before a body, a tribunal, and say, "No, this transaction was good"?

They do not have it in clear form. That right is not there. The right of the administrator to say, "I don't like this deal," is there, but there is not the following right to say, "I don't care what the administrator says, I want the right to prove that the transaction I entered into between the employer and employee is good." We are not talking about the difference between \$5,000 and \$2,000; we are talking about something where the relationship between parties being called into question, or is it not?

Ms S. Murdock: Maybe I am missing something here, because if section 40q is called upon by the administrator and, for whatever suspicion, the parties are called before to give an explanation or given a different order to pay or whatever the situation is, they do get their opportunity to present their arguments. I do not know why you would think there needs to be a special system for that particular infraction, separate and apart from the system that is already in place.

Mr Offer: Then why was the response by ministry officials that there is not a forum except that prescribed by natural justice?

Ms S. Murdock: I am going to let Laura answer, because she probably can say it much more succinctly than I.

Ms Hopkins: As a matter of administrative law and common law, if the program administrator is going to make a decision that might affect someone's entitlement to compensation from the program, the administrator is going to have to give the parties an opportunity to be heard.

The program administrator can do this in one or two ways. One is the kind of hearing that most of us understand to be a hearing where people come before him, say their piece, listen to the other party say his piece and respond. That is the conventional kind of hearing. Or there is something called a paper hearing where the parties submit their views in writing. The views are shared with the other party and there is an opportunity to respond.

In all respects this is like a judicial determination and the program administrator must make decisions based on what is put before him by the parties. This does not need to be stated in the act in order to be the status of the law, and so it may be clearer to say, "Yes, as a matter of administrative law and common law, there will have to be a hearing before a decision is made by the program administrator here."

Mr Offer: What is the response to the first reaction to my concern, that says this would not be permitted because of the exclusion or the non-application of the Statutory Powers Procedure Act?

Ms Hopkins: The requirement of the program administrator to hold a hearing is not what is set out in the Statutory Powers Procedure Act. The SPPA describes the process that the hearing might take. In the absence of the SPPA applying, there can be a different kind of process, but there has to be the opportunity for the parties to be heard.

Mr Offer: Fine. What type of process is contemplated in the absence of the SPPA?

Mr Jenkins: As I mentioned, written submissions, possibly also viva voce evidence presented. There will not be, of course, examination and cross-examination and testimony given under oath the way there would be in an SPPA hearing, but as counsel mentioned, the parties will have an opportunity to submit evidence and also to rebut the other party's evidence, if necessary.

Mr Offer: You say there is not cross-examination, etc., of all that, but there is the opportunity to rebut evidence.

Mr Jenkins: That is right.

Mr Offer: Okay.

The Chair: I am wondering if I might interrupt to indicate that it is 12:05, and subject to what the committee might direct, perhaps we could break for lunch. We are scheduled to return at 2. There may well be a more specific response to your questions at 2. I cannot be certain of that, I do not know, but there may well be. So subject to anything the committee might direct now, I would suggest that we recess until 2 o'clock this afternoon.

The committee recessed at 1205.

AFTERNOON SITTING

The committee resumed at 1412

The Chair: Welcome back. Mr Offer was speaking to section 40q.

Mr Offer: I think I made all the points I wanted to on this. Basically, I had that concern, and still do, as to whether there is a guaranteed right to a hearing in the event that the administrator deems an arrangement between an employer and an employee is curious. I think the principle of section 40q is right; my concern is really with the exemption of the Statutory Powers Procedure Act, which is something we have not yet come to. We have stood that down. I think I have said on this section everything that can be said.

The Chair: Ms Murdock, is there anything further you want to say with respect to section 40q?

Ms S. Murdock: This may open the discussion again, but ministry staff doublechecked and looked at it carefully over the lunch hour. Basically, the employment standards officer—and if I have misled, I do apologize, because my understanding when I read it was that the ESO would bring it to the attention of the administrator and the administrator would then make a decision, and that is not the case. The ESO is the one who has the power to issue an order to pay. It would then be brought to the administrator's attention, and the only power of the parties for review would be through the courts in judicial review.

The Chair: Does section 40q carry? Carried.

Section 40qa, Ms Murdock.

Ms S. Murdock: This is the authority for agreements with the federal government. Should the federal government come in with a wage protection program, if it is implemented, it gives authority to the provincial government to negotiate.

Ms Witmer: I have one question. Is there is any new information regarding the discussions taking place with the federal government since the minister was here?

Ms S. Murdock: They were meeting that following Wednesday, as I recall. It is still under negotiation. The regulations that would be required under Bill C-22 for that particular section have not even been drafted yet under the federal, so there is nothing to discuss at this time. There has been no change.

The Chair: Does section 40qa carry? Carried.

Section 40qb, Ms Murdock.

Ms S. Murdock: Section 40qb is the section regarding the construction industry. The draft legislation is going to be before us, I would hope, by tomorrow morning. I would ask that the matter be stood down until then.

The Chair: Is there unanimous consent in that regard? Agreed to.

Section/article 6:

The Chair: We are now dealing with what is section 6 of Bill 70. Section 6 commences with what will, if the bill is passed, be section 40r.

Ms S. Murdock: Section 40r defines "director." It is amended to eliminate the officers' liability that was debated and discussed after first reading. Parties to a unanimous shareholder agreement will be exempt from liability for unpaid wages where they are relieved of liability under both the Ontario Business Corporations Act and the Canada Business Corporations Act, and it excludes directors of unincorporated not-for-profit organizations from the liability provisions of Bill 70.

The Chair: Mr Offer moves that section 40r of the act, as set out in section 6 of the bill, as reprinted, be amended by adding the following subsection:

"(6) This part does not apply to directors of corporations that employ fewer than 50 employees."

Mr Offer: During our consultation, we heard a number of presentations from representatives of the business community and especially the small business community, however that is defined. I believe when they were coming before us they recognized their right, their obligation, under the Corporations Act, but I think what they were also stating is that this particular bill has the potential of almost penalizing a great many businesses in this province.

Right now, the directors of small business will be subject to the enforcement procedure under this bill. They are and they recognize, rightly so, liable under the Business Corporations Act, and this amendment is not designed to take away any of the obligation of directors, but rather to say that the small business should be exempt from the enforcement mechanism of the bill. This will not impact on the employees' rights to access the fund. That remains in tact and it is something which we strongly believe in. It will not impact on the liability of directors currently under the Business Corporations Act. That is something which I believe the directors of corporations recognize.

What this is saying is that small business creates a great many jobs in this province, and as small business, it becomes in many ways more difficult to predict what is going to happen. There should be some acknowledgement of that, there should be some acknowledgement of the entrepreneurial spirit and there should be some message in a bill such as this that while protecting the rights of the employees, which this amendment will not affect, we can also say to small business, "We want you to form a business in this province, we want to get the very best people as directors," and we want them to recognize that, in certain instances, they will be free from the enforcement aspect of the bill.

1420

This amendment will not affect the rights of the employees. It will not affect the obligations under the Corporations Act. It is designed to exempt the operation of the bill in its enforcement on directors of companies that employ fewer than 50 employees.

When we were talking about section 40i, Ms Murdock spoke to the point that the majority of business that will be affected by this bill is small business and she went on to

say, "And we all know that they are the backbone of our province."

I am saying, let us show that confidence, let us show in this bill that you can do two things: that you can protect the employees, but you can also send out a very positive message to those who want to create business in this province, that want to expand business in this province, and want to be part of this province. This amendment will permit that to happen. This amendment takes nothing away from anyone, it gives.

I hope that it will receive the support of the members of this committee so that a positive, strong message is given not only to the employees of this province, but also to the business.

Mr Hugot: I appreciate Mr Offer's comments. They are always well thought out and certainly interesting.

When we look at an exemption for employers of fewer than 50 people, I have a problem in that the intent of this legislation is to provide protection to people who are unfortunately not able to collect moneys due them. If we were to make such an exemption, I believe it increases the likelihood of many people not being able to collect money that is owed to them. Quite frankly, having owned and operated a business with the huge employee complement of two, I think directors certainly should be seen to be liable for wages and money that is owing them.

So I do not see anything productive in this amendment in terms of the intent of the legislation. Clearly, the intent is to allow people to have recourse in obtaining moneys owed. So I could not support the amendment.

Mrs Witmer: My understanding would be that all individuals would still continue to be able to apply to the fund, but if it was a company with less than 50 employees the directors would not be liable. Is that not right, Mr Offer? All employees would still have the same right.

Mr Offer: That is exactly correct. This amendment does not affect the right of the employees to access the fund. What this amendment is directed to do is show whether the government should be able to sue the directors of small business, the creator of most new jobs in this province, and what message that sends out.

Mrs Witmer: I would hope the government would give very serious consideration to this amendment. We are certainly prepared to support it. If we take into consideration that employees are going to be covered whether or not this amendment is supported, and if we also take a look at the other side of the coin—we have heard many times from people who have appeared before this committee and from letters that we have received, and we simply have to take a look at the data, it is small business that is creating the jobs in this province—it is small business that has the most to lose from bills such as Bill 70 and the Labour Relations Act.

I would hope that we would seriously consider this type of exemption for small businesses that employ fewer than 50 employees. One of the concerns those people have expressed to us is the ability to get insurance coverage. I am very concerned because the government has never assured us that insurance is going to be available and that it

is going to be available at a fair rate, one that small business can afford. Also, now with the enforcement mechanism being enhanced, all small businesses are going to need the insurance. Many of these people never had it before. It is obviously going to increase the cost of doing business in this province.

If we are really concerned about employees, if we are really concerned about the creation of new jobs and making sure that we do not lose any more, I hope we will support this amendment.

Ms S. Murdock: Actually, we did look at putting a number at one point and we discarded it eventually because, first of all, all directors in this province should be liable. The majority of companies will never even come through this plan. It is going to be the companies that, through unforeseen recessions or whatever, will have been just walked away from; this plan will then have to be put into effect. But regardless of size, directors have a liability. At present, they do already have a liability under the Ontario Business Corporations Act. The amendments are actually not going to increase their liabilities.

The other thing we looked at is that seasonal employers are caught in this. At one point in the year a seasonal employer will have two employees and at another point 75. Then you get into that whole administrative nightmare of determining when and at what point you are going to have 50 employees—you get into that whole discussion and someone is going to have to make a determination.

The other thing we looked at in terms of the number aspect is the whole idea of increasing the cost to the fund. Yes, it has been pointed out here time and again that the taxpayers of Ontario are paying for this, at least in the first 18 months and after that it is still to be discussed. The thing is, if you eliminate the liability of a number of the directors for those companies under 50 employees, you can conceivably then be increasing the costs to the fund with no avenue of recompense or recouping costs.

So it is not something we have not considered, but it is something we have considered and did not think was suitable to this act.

Mr Ramsay: I would like to make another pitch for this because when Steve and I worked on this amendment to the legislation, first of all we felt that because the worker was still entitled to compensation it was a worker-friendly amendment and what we were trying to do was to bring a little balance to those very small businesses and we debated, as I suppose you had—and you have indicated to us that you had—what number would be appropriate.

What we were trying to do, as was expressed by many of the people who came before us in our previous session, was to protect very small and vulnerable businesses that rely on outside expertise because their staffing levels are so small that they cannot afford to hire consultants or bring the expertise on staff and, therefore, look to directors bringing outside business knowledge to that particular operation as an assistance to improve and continue the viability of that operation.

It is a technique that is used by all business, but is especially needed for small business where maybe the

business acumen is not present and, therefore, you can start a business but invite people to be on your board of directors who can bring some experience from other business activity; and what we wanted to do was not scare away that expertise from small businesses which, as Mr Offer has explained, create most of the jobs in this province. It does not affect the workers. The workers are still going to get what is due them. But at the same time, we would hope it would not scare off people from contributing their knowledge to the development of small business in Ontario.

1430

We, like you, debated the number—and you could pick any number; most official definitions of small business are those having up to 150 employees. We really wanted to target very small employers. You could look at average person-years, I suppose, to try to define it more closely; it would be an average over the year, to take in the valid point that the parliamentary assistant makes about seasonal employment.

I just think it would be an important signal to small business: we want to assist you and not frighten off that business expertise that you might be able to garner through directorships in your business; and that is the point of this. Again, the number is debatable. We could even reduce it. What we are trying to do is send a signal out there that we are open for business in the province. We want to encourage small business and small business expertise being shared across the board.

Mr Arnott: I would like to follow up on what Mr Ramsay said. I certainly agree that a signal has to be sent to small business that the government is no longer going to continue to stand in the way of small business. A few weeks ago I was in Elora talking to some small business people. Their biggest complaint is that the provincial government and governments of all levels do not understand that they cannot continue to have more paperwork, more regulation and enhanced liability thrown at them.

Governments in the past number of years, including the most recent years, have continued to do that and a signal has to be sent at some point that we are going to do the reverse and try to simplify the regulation and reduce the liability. Otherwise small business, as we know it, is not going to flourish. I hope the government members will consider that before they decide how they are going to vote on this amendment.

Ms S. Murdock: As it stands, without this motion before us, there is no differentiation between whether you have one employee or 1,000 employees or more and the liability that exists for the directors at present under the OBCA—and most small businesses are registered under the OBCA rather than the Canada Business Corporations Act—the liabilities do not change whether you have one or 1,000. They are the same. If you say this would be sending out a message, it would then basically say we are discriminating against the directors of companies who have 50 or more employees; that even though they have 50 or more, they are going to have to come under this act, but the other ones do not. You have not convinced me, I am sorry.

Mr Offer: I can sort of get the picture of what is going to happen to this amendment.

Interjection: What do you mean? We have not voted yet.

Mr Offer: I can see it in the government members' eyes that they are saying no to this one.

Mr Huget: Was it the easel that tipped you off?

Mr Offer: Listen, all directors of businesses are liable under the Business Corporations Act, so that is not going to be affected. All employees will be able to access the fund, so that does not change. The question we have is, is it not about time to stop just saying how important small business is to this province and put some action behind those words and say: Listen, this is going to cost small business money. They are going to have to get insurance. They are going to be less able to deal with that. They are less able to project into the future as to what the health of their business will be. Everyone makes speeches about how important small business is to this province in terms of the way in which they create jobs. We speak highly about what small business means to this province, about what it has contributed to this province. Now we have an opportunity to put something behind those words.

We are ready to do so on this side. We are ready to say that we can do it without detracting from the rights of the workers, without detracting from the responsibilities under the Business Corporations Act, but with sending out a clear, strong, positive message to the small business community in this province to create and to expand, the direct result of which will be jobs. Are we ready?

Mr Cleary: We feel very strongly about this part of the bill and I was going to make a suggestion. I know the government members have not totally made up their minds—at least I hope they have not; they said they had problems with it and had debated it—so I was going to suggest that maybe they sleep on it tonight and come back in a better mood tomorrow and come in with some figure. We do not have that 50 in stone. We could let them make a suggestion there and we would support it.

The Chair: Just what are you suggesting, Mr Cleary?

Mr Cleary: I am suggesting that if they are not in favour of 50, I think there is some flexibility there, because we feel very strongly about that.

The Chair: If it is a motion that a decision about 40r and the amendment be stood down, is there unanimous consent in that regard?

Ms S. Murdock: No.

The Chair: Okay. There is not unanimous consent.

Ms S. Murdock: I mean it is not the question of 50.

The Chair: Fine, there is not unanimous consent. All those in favour of Mr Offer's motion? Opposed? The motion is defeated.

Does section 40r subsections (1) through (5) carry? Carried.

Ms Murdock, section 40s.

Ms S. Murdock: Liability of directors is under section 40s and it is the joint and several liability of directors.

Under clauses (a), (b), (c) and (d) it is the conditions under which the liability would apply and under subsection (2) the employer is primarily responsible.

Anticipating some of the debate in the near future, I want to bring to the attention of the committee that it is stated quite clearly that the employer is primarily responsible for the employee's wages. There is a policy statement that will be forthcoming regarding the enforcement section of that particular portion.

Subsection (3) is in regard to wages for which officers and directors are directly liable; these do not include termination and severance. And vacation pay, of course, is the minimum provided statutorily. Holiday pay under subsection (5) is determined under this act and regulations and overtime wages the directors are liable for are the greater amount of overtime pay provided in section 25 and the amount contractually agreed upon.

Subsection (8): the maximum liability is six months' wages and 12 months' vacation pay. Subsection (9), "Directors are liable to pay interest as prescribed," which we already passed earlier. Subsection (10), "A director who has satisfied a claim for wages is entitled to contribution in relation to the wages from other directors who are liable for the claim." That is the entire section.

1440

Mr Offer: I have three amendments and I do not know how you wish me to proceed with them. I can read them all in. It is up to you.

The Chair: Perhaps we could deal with them one at a time. The amendment dealing with clause 40s(1)(a) would be the appropriate one to begin with.

Mr Offer moves that clause 40s(1)(a) of the act, as set out in section 6 of the bill, as reprinted, be amended by striking out "receiver appointed by a court with respect to the employer" in the fourth and fifth lines and substituting "employer's receiver."

Mr Offer: Very shortly on this point, this was as a result of a submission made, I believe, by the Metropolitan Toronto Board of Trade which stated that this bill, the way the word "receiver" is expressed, excludes the area of the private receiver.

I believe that type of suggestion should be dealt with. We do not want to unwittingly exclude other persons involved in this area. As such, we move this motion.

Ms S. Murdock: I am starting to feel I am repressing Liberal motions here, but actually it is true that privately appointed receivers are not included under this because they are dealt with under the present Employment Standards Act, so there is no necessity for including them.

We had a concern, as we stated when the construction people were here, about having third-party applications made to the fund. We did not want to get into that whole thing on the construction trustees. Again, the same thing here.

The other thing is that it sounds cumbersome to say "receiver appointed by a court with respect to the employer" can in effect be replaced with "employer's receiver" because a receiver in any instance is representing

not the employer but a financial institution, so the wording is incorrect, if I may respectfully point out.

I know the gist of this motion is to get at the privately appointed receiver and, in this instance, it is already taken care of under the Employment Standards Act, so it is not necessary to the act.

Mr Offer: I think I can read between the lines. This one is going to be defeated like all the other motions to be moved.

The Chair: Let's find out. All those in favour of Mr Offer's motion, please indicate? Opposed?

Motion negatived.

The Chair: Mr Offer moves that subsection 40s(2) of the act, as set out in section 6 of the bill, as reprinted, be struck out and the following substituted:

"(2) Despite subsection (1), the employer is primarily responsible for the employee's wages and proceedings may not be commenced to collect wages from directors under this part until proceedings against the employer under this act are exhausted."

Mr Offer: The reason for this amendment is again as a result of a number of submissions to this committee during the public hearing process, short as that process was and limited as it was in terms of hearing individuals.

They said there was a certain need to set up a scheme such that, for instance, in a bankruptcy, before going against the director, there should be the obligation to exhaust the proceedings against the employer, at very least under this act.

This amendment does not say the remedies must be exhausted, period. I recognize that, for instance, civil action and getting the sheriff and all of those things involved would be quite time consuming. However, what we are saying is that before you go against the directors under this particular section of the Employment Standards Act, is there not an obligation that we at least make certain all avenues against the employer under the same act have been exhausted before you go after the directors? Or are we going to get into the position where the branch is going to just go, first instance, against the directors? That is the fear, that the directors will not be looked upon as the last resort, they are going to be looked upon as the first resort and there is nothing to guarantee a certain level of performance by the branch that they will move against the employers under the very act they administer. This particular amendment will provide that guarantee.

Mr Klopp: I have to disagree. I think it is almost like nitpicking in a way. The way the act reads now is the best way to have it because I think the intent is very clear that you go after the employer first. But common sense tells a lot of us, if you know the person has skipped off to wherever, somebody can argue, "Well, you've got to go and exhaust that." It could take five years.

This allows for a little bit of common sense. It says very clearly that the employer is supposed to be gone after first, but at some point you may decide to start looking at the directors and working it that way. In fact it may help. For directors, all of a sudden amnesia might not set in and they will remember where the employer is if you maybe

can start talking to them, I do not know. I think this is fair the way it is and I disagree with Mr Offer.

Mr Offer: I disagree with your reasons for your opposition. The first point is that the bill does not say that. The bill, under subsection 40s(2), states that though the employer is primarily responsible for an employee's wages, there is no necessity to exhaust all of the proceedings before going after the directors. That means to say you do not have to do anything. Let's be frank about it, that is what it means. You do not have to commence anything against an employer before going after a director. If you say you do not have to exhaust a remedy, it necessarily will mean you do not have to commence a remedy.

I recognize the point of what this means timewise. That is why this particular amendment has been specifically narrowed to saying that before you go after a director under this part, at least make sure you have exhausted your remedies under this act; not under anything else, but under this act. We are just sending out such an incredible message that this amendment is trying to combat such a message. We are saying to directors: "You can be liable, but don't worry, you are not primarily liable. But, oh, the branch does not have to exhaust the remedies against the employer." What a crazy message to send out.

Is it not, in principle, fair to say that if directors are going to be liable, and you say employers are primarily responsible, that you at least say your actions must belie this principle, that before you go after the directors you must exhaust your remedies under this act? If you do not agree with that principle then you can change the act to say, "Once there is a determination, just go after the directors," because that is the message you are sending out. With all due respect, if you do not think you are, then I suggest you do not appreciate what the section means.

1450

The Chair: Ms Murdock, very briefly, and I trust in clarification of a very specific point.

Ms S. Murdock: Simple clarification. Mr Offer's worries would be very real with regard to "proceedings against the employer under this act do not have to be exhausted before proceedings," if the first two lines were not in this subsection (2). It is very clear that those very lines change the import. You would go after the employer first and then after the directors. I would be more worried that Mr Offer was correct if that was the case.

The established practice at the employment standards branch has been that you go after the employer first even now, and that practice is not going to change overnight just because this act is passed.

Mr Offer: My reply is that I disagree with you. That is not what that says and that is not what that means, and there is not a court in this land that would agree with you.

The Chair: All those in favour of Mr Offer's motion, please indicate?

Opposed?

Motion negated.

Mr Offer: I have to write "defeated" down on this one. I am going to get a stamp that says "Defeated mo-

tion." As an aside, Mr Chair, if you had allowed me to put that question to the members earlier on that they have already decided to vote against all of our amendments, I could have saved a lot of time and effort.

The Chair: Mr Offer moves that section 40s of the act, as set out in section 6 of the bill, as reprinted, be amended by adding the following subsection:

"(11) Despite subsection (1), no director is liable under this part if the director exercised reasonable diligence in carrying out his or her duties as a director."

Mr Offer: This carries forward in some way the principle dealing with the small business director. I believe we heard, if memory serves me, the argument by the Canadian Bar Association that if you are setting up an enforcement mechanism under this bill—which you are—and if there is going to be an inquiry under this bill to determine how much an employee is owed—as there is—then maybe the time is right to allow a director who has done all he or she could do to save a company, to try to work out some accommodation, to try to keep that company viable, to try to make that company continue, and may not have been successful, at least to be able to put forward that the director acted in this instance with due diligence, thereby defending the personal liability enforcement mechanism under the bill.

This does not have any impact on the Corporations Act. It sends out a positive message that directors who exercise reasonable diligence, who work to try to save a company, who work to try to maintain jobs, even if not successful, will be able to escape the enforcement mechanism under this particular bill.

There is an awful lot that can be said to this particular motion. I think there is precedent for this type of argument to be made under the Income Tax Act. I believe that is possible, but I do use the word "believe" and I do not state with certainty. But I have done some reading and read some submissions that there is that opportunity for that type of argument to be made, and is that not what we want? Do we not want a bill that protects the employees but also says to directors, "If you're running into some tough times, do what you can, try to restructure, try to reorganize, try to save the jobs, try to save the business, and even if your efforts fail, you will be able to potentially escape the personal liability enforcement mechanism of this bill?"

Is that not what we want to say? Or do we want to say: "If your company is running into a problem, leave it. Let it go. No effort is required because what you do or don't do will have no bearing on the enforcement mechanism under this bill?"

We have an opportunity to send out a very positive message. We have an opportunity to say we are going to protect the rights of the employees. We are going to allow good directors to prove their worth. We are going to give every opportunity to businesses that are failing to potentially succeed, to potentially rise up again. This particular motion speaks to that direction.

I believe the Canadian Bar Association said that not only could it be in this bill; it could also be in the Business

Corporations Act. Maybe we could be setting an important message for potential change to the OBCA. Maybe so, I do not know, but we are here today dealing with this bill today, dealing with the type of message that we want to do. We have such an opportunity to protect workers on one hand and permit directors to do what they can do best, to build in the expertise, the experience. This particular motion and its success will send that message out.

Ms S. Murdock: I was going to state that the Ontario Business Corporations Act, which Mr Offer has already mentioned, does not have the due diligence provision, and this motion does not change any of the liabilities. I know what you are saying, but the thing is that an administrative nightmare would ensue because of this, in terms of just even definitions and when you look at administrative law cases on the definitions of due diligence, you know what would ensue in terms of delay on this. Particularly since it is not different from the OBCA, I would have to not support Mr Offer's motion.

Mr Offer: There will be no delay as a result of accepting this amendment; absolutely none. This has no effect on the employees accessing the fund. They have already received their dollars. It has no effect on the liability of directors. That is established under the Business Corporations Act.

It has everything to do with whether the government of Ontario is ready to say to those directors, "We have some faith in you and we want you to try to do whatever you can to save companies that are having problems," and that is what it has to do with.

1500

To say that it would impact on workers is wrong. To say that it would cause a delay is wrong. Those workers have received their money long before. What it has to do with is whether the government is saying whether the directors will have the opportunity to argue that they should not be personally liable at the hands of the province of Ontario.

That is what it is saying: allowing them to make an argument, allowing them to say: "This is what happened. This is how we think it happened. After hearing this, these are the steps we took." This type of motion can save jobs. This type of motion can save companies. This is a type of motion which says to directors: "You work at this. You try to save the company." Sometimes they will be successful. What type of message do we want to send out? By accepting this amendment, you send out the positive message. By defeating it, you do not.

The Chair: Thank you. All those in favour of Mr Offer's motion, please indicate. Opposed?

Motion negatived.

The Chair: Do subsections 40s(1) through (6) carry? Carried.

Does subsection 40s(7) carry? All those in favour, please indicate? Those opposed? Subsection 40s(7) does not carry.

Do subsections 40s(8) through (10) carry? Carried.
Section 40t, Ms Murdock.

Ms S. Murdock: Liability for settlements. Subsection 40t(1) is that directors may limit their liability through the negotiation of a bona fide settlement of wages or severance pay. Subsection 40t(2) is the liability of the director where a settlement was coerced or based on misrepresentation or fraud. Subsection 40t(3) is the determination of liability for an amount in excess of the agreement. Subsection 40t(4) is the maximum liability of a director under the act beyond the amounts set out.

The Chair: Does section 40t carry? Carried.
Section 40u, Ms Murdock.

Ms S. Murdock: Employment standards officers may make an order against the director in situations where an order is being made against an employer. It also eliminates, in this reprint, the words "officers" and it eliminates the director's liability for compensation other than earned wages.

The Chair: Does section 40u carry? Carried.
Section 40v, Ms Murdock.

Ms S. Murdock: Section 40v is timing of the order against directors. It allows the employment standards branch to issue orders to pay against some or all of the directors where an order has been issued against the employer.

Subsection 40v(1) allows the employment standards branch to issue orders against those who are not initially served.

Subsection 40v(2) is the appeal rights of the directors served. They have an automatic appeal right for any portion of the disputed or undisputed amounts. They may dispute either the entitlement of the workers to the wages or they may dispute that they are directors of the employer.

Subsection 40v(3) is that directors are to specify the appeal grounds at the time of the application.

Subsection 40v(4) is the scheduling of appeals by the corporate directors. Directors would be scheduled as quickly as possible, but are not subject to the 45-day limit which applies to employers.

Did they want me to go on for subsections 40v(5), (6) (7) and (8)?

The Chair: Those appear to be self-evident, through to subsection 40v(8), self-explanatory. Do subsections 40v(1) through (8) carry? Section 40v carries.

Section 40va: Is that similarly self-explanatory, Ms Murdock?

Ms S. Murdock: Yes, it is.

The Chair: Does section 40va carry? Carried.
Section 40w, Ms Murdock.

Ms S. Murdock: It is a limitation period to ensure that the two-year limitation period in the Employment Standards Act applies to directors' liability as well and it removes "officers" in this section as well. I should point out too that it ensures that the limitations and prosecution here under the Employment Standards Act prevail over the limits in the Ontario Business Corporations Act.

The Chair: Does section 40w carry? Carried.
Section 40x.

Ms S. Murdock: It is service of an order on officers and directors.

The Chair: Is that self-explanatory?

Ms S. Murdock: I would think.

Mr Offer: I have a question as to whether all the directors must be served for an order to be effective. This was a matter which was brought up during our discussions, and the question is: If there is a company that has 30 directors, do all of the directors have to be served before the order is effective? The corollary is that if there is a corporation with 30 directors, can the order be served on only one, and as a result of being jointly and severally liable, you go after the director with the deepest pockets? What obligation is there under this legislation to make certain that all directors in any one particular matter will all be served before proceedings are continued?

Ms S. Murdock: Based on the language used in some of the previous clauses, my understanding, and I will just check with the legal counsel, is that all directors would not have to be served.

Mr Offer: Do all directors have to be served before an order can be proceeded with?

Ms Hopkins: No.

Mr Offer: Is there anything in the legislation that would stop the administrator from serving one director even though the other directors are servable?

1510

Ms Hopkins: Anything that would prevent service? Not that I recall, no.

Mr Offer: So the administrator could determine that the best chance of recovery is against one particular director, just serve that director and let the rest of the directors remain unserved and not prejudice any of the proceedings under the bill.

Ms S. Murdock: Suppose service was done on only one out of 30. That one then has the right to turn around and seek redress from the other 29 under present legislation and it does not change under this. I guess it could become difficult, and you would not want to be restrained to the degree where you would have to have service on all 30 before anything could be done. That would be in many instances impossible, particularly when employers are oftentimes directors. I mean, the situation does arise often, and particularly in small incorporations, where the employer and his wife and his brother-in-law and so on are all the incorporated company. They all go.

Mr Offer: Do you not think that there is some obligation on the part of the government to serve all directors, if that is possible?

Ms S. Murdock: Yes, absolutely. If it is possible to serve all 30 of them, definitely, but you serve it at the last known address. But one receiving it is good enough to come under this legislation.

Mr Offer: I guess my concern here is, recognizing the difficulty of service sometimes, and recognizing that it is not always easy to find out where the directors are, we are always going to be dealing with a corporation, and in the

corporation there will be the names of the directors and service. That is always going to be there. Should there not be that necessity to serve at that address or that place?

It is not in the bill, if you are looking for it. My suggestion is it is not in the bill. There is no obligation on the part of the government in its enforcement mechanism, and since the government members have already voted down my amendments on small business directors and due diligence, you are not even saying that you have to serve all of the directors or make any effort to ascertain who the directors are and then attempt to serve. It is becoming quite draconian.

Ms S. Murdock: I take offence at that, because it is not draconian in the sense that to be an incorporation under the Ontario legislation, under the OBCA, you have to list who your directors are, and if you are not incorporated under that legislation, then you have not got the protection that is allowed under being a director, and the responsibility is for you to let them know what your last address was, and that is the address that would be used. It would be on your application for incorporation and your updating of those records on an annual basis.

Mr Offer: Help me out why section 40x does not say a director shall be served, as opposed to "may."

Ms S. Murdock: Oh, well, that is true. Okay.

Mr Offer: Just help me out on that.

Ms S. Murdock: The verb in that sentence is "served," and therefore the service is "may," rather than the director. The thing is that a director will be served by pre-paid registered mail, or shall—I suppose it could be, but I mean, you do not know. Let legal counsel answer that.

Ms Hopkins: There is more than one way that service can be accomplished. One of the ways that you can accomplish service is in person. Another one of the ways that you can accomplish is by mail, and then there is provision for other ways when those kinds of service are not able to be functionally achieved. So the reason that it says a director may be served by pre-paid mail is to make it clear that is only one of an array of ways that you can achieve service. If you said service must be or shall be by pre-paid mail, that would be the only way that you could do it.

Mr Offer: Under the section, would you agree that there is no obligation to send out service to all directors?

Ms Hopkins: I agree.

Mr Offer: Would you agree that there is no necessity to attempt to serve all directors?

Ms S. Murdock: Yes, there is nothing in there that says they must attempt it either.

Mr Offer: Then the last point—because I see Mr Waters says "What's happening here?"—do you not think there is something—

Mr Waters: My statement is that I do not think this is the right section for the discussion. I think this is talking about an individual director; how you approach each and every individual director. It is not how many directors you approach. This whole section of the bill is not even a part

of what your conversation has been, I do not think, unless I read it wrong.

Mr Offer: No. It is. I just want to make sure that the directors are aware of the action going on and that there is an obligation on the part of the government to attempt to inform all of the directors. I just do not see it here, and if it is, help me out, show me where it is; and if it is not, do you think that is right?

Ms S. Murdock: The section is not to perform delivery. Section 40x is simply for the kind of service that may be applied. There is nowhere here, anywhere in any of this, that says all directors must be served. This is type of service, not to whom.

Mr Offer: Okay, fine, if that is what they say it is. That is ridiculous—absolutely nuts.

The Chair: Mr Offer, do you have any other queries or comments?

Mr Offer: No. Call the vote. I am not voting in favour of that.

The Chair: I will. All those in favour of subsections 40x(1) through (3) please indicate. Opposed? Section 40x carries.

If I may refer back to section 40w, which was voted upon, 40w as contained in your reprinted and amended copy of Bill 70—

Interjection.

Ms S. Murdock: Oh. Good point, thank you.

The Chair: —which, of course, being a reprinted and amended copy of Bill 70, deletes subsections 40w(1) and

(2). I understood the vote on section 40w to be subsections (3) and (4). I would, in view of that, put the question to the committee. Do subsections 40w(1) and (2) carry? All those in favour please indicate. All those opposed? Subsections 40w(1) and (2) are defeated; do not carry.

Confirming the question as to subsections 40w(3) and (4), do those carry? Carried. Thank you.

Mr Offer: Mr Chair, on a point of order: We have gone to this particular point in the bill, and I would ask if we might adjourn for the day, again on the understanding that it is our hope, desire, wish and all those things, to complete the bill by Thursday?

The Chair: There is a motion to adjourn. It is not debatable. I have some problems in that—

Mr Offer: I cannot even get my motion.

The Chair: I have some problem considering that motion at this precise time. Can I suggest perhaps a five-minute recess?

Mr Offer: Okay.

The committee recessed at 1521.

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The Chair: May we resume? There is a non-debatable motion by Mr Offer on the floor to adjourn. All in favour of Mr Offer's motion please indicate. Any opposed? Nobody opposed. Mr Offer's motion is successful. We will return at 10 o'clock tomorrow morning.

The committee adjourned at 1530.

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(Hansard)**

Wednesday 21 August 1991

**Standing committee on
resources development**

**Employment Standards
Amendment Act (Employee
Wage Protection Program), 1991**

Chair: Peter Kormos
Clerk: Harold Brown

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**Assemblée législative
de l'Ontario**

Première session, 35^e législature

**Journal
des débats
(Hansard)**

Le mercredi 21 août 1991

**Comité permanent du
développement des ressources**

**Loi de 1991 modifiant la Loi
sur les normes d'emploi
(Programme de protection
des salaires des employés)**

Président : Peter Kormos
Greffier : Harold Brown

Publié par l'Assemblée législative de l'Ontario
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 21 August 1991

The committee met at 1017 in committee room 1.

EMPLOYMENT STANDARDS AMENDMENT ACT
(EMPLOYEE WAGE PROTECTION PROGRAM), 1991

LOI DE 1991 MODIFIANT LA LOI
SUR LES NORMES D'EMPLOI
(PROGRAMME DE PROTECTION DES SALAIRES
DES EMPLOYÉS)

Resuming consideration of Bill 70, An Act to amend the Employment Standards Act to provide for an Employee Wage Protection Program and to make certain other amendments.

Reprise de l'étude du projet de loi 70, Loi portant modification de la Loi sur les normes d'emploi par création d'un Programme de protection des salaires des employés et par adoption de certaines autres modifications.

Section/article 6:

The Chair: Good morning. We are ready to resume our consideration of Bill 70, clause by clause. Is there any discussion regarding section 40y?

Mr Offer: Could you give us some ideas as to how an order might read? You are saying that a director who fails to comply with an order is potentially liable. How would that order read, the style?

Ms S. Murdock: I will let Mr Jenkins answer.

Mr Jenkins: It could require that the director pay the amount directly to the employees or it could require that the director pay the money of the capital to the director of employment standards, in trust. It would be either one of those two.

Mr Offer: It would be named directors?

Mr Jenkins: That is right.

Mr Offer: And the service of the order is found in section 40x.

Mr Jenkins: That is right.

Ms S. Murdock: I wish to point out too that this is in line with what is already in the Employment Standards Act in terms of the dollar amount of the penalty, but it actually is a lesser penalty in that the jail term that is in the ESA is no longer in this section.

The Chair: Shall section 40y carry? Carried. Ms Murdock, section 40z.

Ms S. Murdock: Subsections 40z(1) and 40z(2) are that directors may not contract out of their liability under this act. There is an indemnification for directors by the employer. It is a further protection for directors and it parallels what already exists, reinforces that the employer has the primary responsibility for payment.

Mr Offer: Just a question under subsection 40z(1) where it talks about the not contracting out: Is that similar

to what is under the Ontario Business Corporations Act now? I am not certain.

Ms S. Murdock: Yes, section 136 of the OBCA covers that.

Mr Offer: In subsection 40z(2), I know in words that the employer is the one who is primarily responsible, and I underline in words only. This provision is permitting a director to potentially be indemnified by an employer if the director has paid out money in good faith. This is just permitting an employer to do that. Why is this type of section necessary?

Ms S. Murdock: Actually, I asked the same question, but it also mirrors what is in the OBCA. Legal counsel felt that it was clarification and it created certainty that this provision is allowed.

Mr Jenkins: It assists the parties in obtaining the proper insurance, because under some of the insurance policies the company will be the one that takes out the policy and then the insurance company will reimburse the company for the moneys which the company pays the director under the indemnification agreement. So it facilitates that arrangement.

Mr Offer: Is it of any concern how acting in the "best interests of the employer" is determined?

Mr Jenkins: Again, as I understand it, a lot of policies will not cover situations where the director has acted in bad faith and it mirrors what is in the OBCA.

Mr Offer: Just as a short point, it would be nice if this almost due diligence clause were expanded to the enforcement mechanism in the bill itself.

Ms S. Murdock: Just an additional point is that in many of the directors' contracts where there is coverage some of them do not have the explicit provisions listed. This gives them an additional protection for them, but most contracts do have explicit provisions.

The Chair: Shall section 40z and all of its subsections carry? Carried.

Ms Murdock, section 40za.

Ms S. Murdock: Civil remedies available to persons against officers and directors or to officers and directors against others are not affected by this legislation. So rights to sue in the OBCA, in other legislation or in common law are unaffected.

The Chair: I am pleased to see that the government is reinforcing the right to sue. I hope there is consistency in that regard to the history of this government. Just an observation. Is there any discussion?

Mr Offer: To Hansard, I want the page that this is going to be located on for future reference.

The Chair: I want it first.

Ms S. Murdock: I do not think there is any doubt as to Peter's position.

Mr Offer: I would expect that the government will probably be consistent.

The Chair: Shall section 40za carry? Carried.

Section/article 7:

The Chair: We are now dealing with section 7 of the bill, which contains what would be section 42a of the act.

Ms S. Murdock: It is the appointment of adjudicators provision. They will be appointed to hear appeals from employees against any employment standards branch decisions not to issue orders for wages or other entitlements the employee believes are due. Appeals filed by employers or reviews initiated by the Employment Standards Board will continue to be heard by referees appointed by the minister.

Mr Offer: In dealing with the appointment of adjudicators, my question is whether the ministry has made any decision as to whether, apart from adjudicators, other persons are going to have to be employed, how many and when they expect to be employed. Also, how many adjudicators are intended to be employed and when?

Ms S. Murdock: It is expected that under this legislation there will be 129 new employees throughout the province of Ontario, many of whom initially will be to cover the backlog that exists presently under the employment standards branch. So some will be on contract. When the backlog is caught up and we are into the expedited provisions under this legislation, there are 11 branch offices throughout the province, so those 129 will be spread out through them. The majority of the 129 will be the officers, as I understand it. In terms of the adjudicators' appointments, I would have to get direction from the ministry staff because I do not know.

Mr Jenkins: We have presently determined, I believe, that five full-time adjudicators would be hired. Of course, no appointments have been made yet. It is not certain the exact structure the group of adjudicators will take, but we have determined at this point that five full-time adjudicators would be hired.

Mr Offer: On that point, in dealing with the new staff and also the things that go with it, dealing with offices and all of those things, is the budget for those individuals contained in the \$175-million allocation or is it something else?

Ms S. Murdock: I am seeing nods that yes, it is contained in the \$175 million.

Mr Offer: So the \$175-million fund is not just for the wages but rather for the whole setup of the administration.

Ms S. Murdock: For the entire program.

Section 7 agreed to.

Article 7 est adopté.

1030

The Chair: Now we are dealing with section 7a of the bill, section 46a of the act. Ms Murdock.

Ms S. Murdock: This should please Mr Offer because it is just a definite clarification that deemed wages

under clause 40b(2)(d) is stated emphatically that that is what it is for.

The Chair: Shall section 7a carry? Carried.

Section/article 8:

The Chair: Section 8 of the bill has two subsections.

Ms S. Murdock: The amendment to clause 47(1)(c) eliminates the \$4,000 cap on orders to pay and replaces the term "penalty" with "administration costs" of 10%.

Mr Offer: What does that mean? Does that mean that if the order is, for instance, \$2,000 wages and vacation pay, \$1,000 termination and \$1,000 severance, that the total order, of course, would be \$4,000, but there could be a 10% administration cost on wages? Would that be on the \$2,000 or on the \$4,000?

Ms S. Murdock: When the order is issued, it includes a 10% administrative fee, so if that is not—

Mr Offer: No. I understand an order can really be made up of four categories: wages, vacation pay, termination and severance.

Ms S. Murdock: Yes.

Mr Offer: If an employee is, for instance, entitled to all four of those categories—I will use the example of it being \$4,000—is the administration fee 10% of the \$4,000, which would include wages, vacation pay, termination and severance, or is it on just the accrued wage portion of the order?

Ms S. Murdock: It is on all four. Suppose the order for payment was \$20,000 and the \$5,000 comes out of the fee, the 10% administration fee would only be on the \$5,000, not on the \$20,000. Is that not correct?

Mr Jenkins: No, that is not correct. The 10% administration fee would be on the entire amount of the order.

Mr Offer: I have a question on the order. Although the directors could only potentially be liable for the wages and vacation pay multiplied by the number of employees affected, the order could be wages, vacation pay, termination and severance, so an order could ostensibly be \$15,000. The directors would only be liable for the wages and vacation pay and the \$50,000 fine would only kick in if they did not pay the wages and vacation pay?

Mr Jenkins: If they did not comply with the order. It is a quasi-criminal matter and it would be pursued rarely.

Mr Offer: I know, but I am wondering on what basis it is pursued. Is it pursued on the basis that a director did not pay \$2,000 or a director did not pay \$4,000?

Mr Jenkins: It would be pursued on the basis that he did not comply with the order against him which would be for wages and vacation pay only.

Mr Offer: I know I am just picking out figures, but think even in terms of your figures, the wages and vacation pay on an average basis would be approximately \$2,000.

Mr Jenkins: No. As I understand it, the wage and vacation pay component is substantially less than that on an average claim.

Mr Offer: I know we brought this up very early in our deliberation. I do not want to get any false sense of comfort by that, but are we talking about an average payment

of \$1,000, \$1,100, \$1,500 or \$3,500? Something just sticks in my mind that it is \$2,100 and \$4,000. I do not know why.

Ms S. Murdock: The average of all of them was \$4,200, but I do not recall a figure. Perhaps you have it.

Mr Jenkins: Of the total files that have been assessed so far in our backlog, in dollar terms approximately 85% of the assessment represents termination pay and severance pay. If the average claim is \$4,200, you can extrapolate from that what sort of average wage and vacation component we are looking at. The figures are not finalized.

Mr Offer: I just want to be very clear. I am going to use an example that a company has gone bankrupt and it has 10 employees and each employee is entitled to two weeks' wages and a little bit of vacation pay. Let us say that adds up to \$2,000. The order against the director would be \$20,000, would it not?

There would be severance and termination pay also of, say, another \$3,000, so we have a different figure. The order against the director would not be \$50,000, it would only be \$20,000. Is that correct?

Ms Muir: The order against the director will just be for six months' wages and 12 months' accrued vacation pay maximum.

Mr Offer: That would be maximum.

Ms Muir: Yes, in your case.

Mr Offer: But I am saying that in reality, I do not know anybody who would be working for six months without pay. The maximum they could ever probably get in vacation pay would be one year. But we will just leave that for a moment.

Ms S. Murdock: You are right that it is \$20,000 because only wages and vacation pay are covered for directors.

Mr Offer: And added to that is a 10% administration fee, or \$100, whichever is the greater.

Mr Jenkins: No, there is no administration fee levied against directors.

Ms S. Murdock: Only the employer is levied an administration fee.

Mr Offer: So this issuance of an order to pay, in terms of the administration, is against the employer and not the director. The director is exempt from that. Okay.

Mr McLean: Where does it say in here he is exempt?

Mr Jenkins: The administration fee is provided for in section 47 which refers to orders against employers. Section 47 does not refer to orders against directors. Orders against directors are issued under sections 40u and 40v.

040

Mr Offer: Just re-reviewing this, is a director potentially liable under this particular bill in any way, shape or form for the administration of the order in the same way as clause 47(1)(c), as amended, provides? Is it possible for a director to be hit—

Ms Muir: With the administration charges?

Mr Offer: Right.

Ms Muir: No.

Mr Offer: Anywhere in the bill?

Ms Muir: No.

Ms S. Murdock: Just to clarify for Mr McLean, if you look at clause 46a(c), on page 10 of the reprint, in the middle of that section it says, "such order shall provide for payment, by the employer to the director, of administration costs in the amount of."

The Chair: Shall subsection 8(1) of the bill carry? Carried. Now, Ms Murdock, please, subsection 8(2) of the bill.

Ms S. Murdock: We are looking at subsection 47(1a). This is a situation where the employment standards office arranges a settlement or a compromise with the employer and the employer then defaults. This covers those situations where the default has occurred and you are eligible to apply to the fund for the max. If the employment standards officer makes an arrangement with the employer for whatever the settlement will be and issues an order and the employer does not pay, then the settlement agreement with the employment standards officer is not binding.

Mr McLean: Then who pays?

Ms S. Murdock: As an example, if an arrangement, a settlement or a compromise was made where the amounts paid—it would be like a union agreement perhaps where it might be less than the fund provides, if that is the case, or more, but the fund will only go to a maximum of \$5,000. But if it was less than that and the employer agreed and then, for whatever reason, did not and defaulted in the payment, then the employee will be paid to the maximum of the amount up to the cap, and the settlement is no longer in force.

Mr McLean: So then the employer would be off the hook.

Ms S. Murdock: No, the employer is never off the hook. Supposing the employer had made a deal that each employee was going to be paid \$3,000 and, for whatever reason, he reneged on the deal, but the employees were owed \$4,000, for example, but because of his financial circumstances the employment standards officer and everybody agreed to this, and then the default occurred, then the employer is on the hook, as you say, for the \$4,000 and not the \$3,000. The settlement is just null and void.

Mrs Witmer: I have one further question related to that. Would they then go through the normal steps of the wage protection fund, and the directors become liable as well?

The Chair: Did you want to respond to that?

Ms S. Murdock: I am nodding.

Mr McLean: Did I hear you say the directors were then responsible?

Ms S. Murdock: The employer is always primarily responsible. The directors are responsible as well, but you go after the employer first so that if a deal is made and the employer does not follow through with it, you would have recourse both to the employer and the directors.

The Chair: Shall subsection 8(2) of the bill carry? Carried. Shall section 8 of the bill in its entirety carry?

Section 8 agreed to.
L'article 8 est adopté.

The Chair: Referring back to section 6 of the bill, having been considered piecemeal and carried piecemeal, shall section 6 of the bill in its entirety carry?

Section 6 agreed to.
L'article 6 est adopté.

Section/article 9:

The Chair: Ms Murdock, dealing now with section 9 of the bill.

Ms S. Murdock: This is subsection 49(1) and a number of subsections right through to subsections (2), (3), (4), (5), (6), and (7). I think I will just run through what subsection 49(1) is. Subsection 49(1) is "Where an order will not be issued," and it is obviously where wages have already been paid, where the employee has no other entitlements under the Employment Standards Act or where there have been no other actions ordered by the employment standards officer.

Subsection 49(2) is employee appeals. This is what we were discussing yesterday in terms of where the employment standards officer has ordered a payment, the employee disputes the employment standards officer judgement and appeals to an adjudicator.

Subsection 49(3) is where a director appoints an adjudicator to hear that appeal.

Subsection 49(4) states who the parties to a section 49 appeal are because—and this includes the employee—the employment standards officer becomes a party, the employer is a party and any directors are parties.

Subsection 49(5) is the powers of the adjudicator, and I should point out too that under the present Employment Standards Act in the past another employment standards officer has been doing the hearings, and this puts an independent person who will be doing that.

Subsection 49(6) is the notice of the adjudicator's decision consistent with the Statutory Powers Procedure Act.

Subsection 49(7) is an adjudicator's order as final and binding on the parties in ensuring conclusive decisions in the appeal process.

Mr McLean: Who pays for the adjudicator? Does that come out of the fund?

Ms S. Murdock: It comes out of the fund. All the costs come out of the fund.

Mr McLean: That is paid by the province?

Ms S. Murdock: It is paid for by the taxpayers of Ontario.

Mr Offer: What are the rules that govern the hearing process?

Ms Muir: The rules that govern the hearing process under section 49, section 50 and 51 are the Statutory Powers Procedure Act rules.

Mr McLean: The order of the adjudicator is not subject to a review under section 50 and is final and binding on the parties. Would the employee not have a further right to appeal to the minister if he was not satisfied with the adjudicator's order?

Ms S. Murdock: Are we on section 49 or section 50? We are still on 49, are we not?

Mr McLean: Yes, subsection 49(7).

Ms S. Murdock: As far as I know, no. No, I was right.

Mr McLean: There is no further appeal to the minister?

Ms S. Murdock: After that you can go through judicial review. You do have access to that. If there is an error in law you can go through the judicial review process. You still have that route, but not to the minister.

The Chair: Shall section 9 of the bill in its entirety carry?

Section 9 agreed to.

L'article 9 est adopté.

1050

Section/article 10:

Ms S. Murdock: Section 10 is section 50 of the act, and this section is the administrative procedures for employer appeals. Subsection (1) is where the employers may appeal, and of course in any order that is made against them there is automatic right of appeal. Subsection (2) has not changed. In subsection (3) the amendment gives the director authority to appoint referees to hear employer-initiated appeals.

Subsection 50(1a) is payment of interest on wage debts. Under subsection (5a) when the employer makes the application for a review he or she must supply reasons for not believing the order to be correct. Under subsection (5b) no money is paid while there is an appeal in process. Under subsection (5c) if there is an undisputed portion of the order, the undisputed portion of the order may be paid but the disputed portion would then go to the review. Subsection (5ba) clarifies that the director of the employment standards branch may extend the appeal time limits for a good reason and whatever decision to be made are on the basis of those reasons. Subsection (5d) is that the decision will be made within 90 days of the appeal date application. That is all of section 50.

Mr McLean: I just have a question. Subsection (5a) says "the director within 15 days of applying for the review." Why 15 days and not 30?

Ms S. Murdock: I do not know.

Ms Muir: It is in the interests of an expedited appeal process so that workers who potentially might be entitled to compensation from the program—it would be preferable to have a 15-day period instead of a 30-day period, but extensions are possible. Also, the 15-day period is currently the applicable time period in which the employer may apply under section 50 as the act now stands.

Ms S. Murdock: And just to add to that, for instance, for smaller employers during the public hearings it was stated that sometimes you do not do your books till the end of the month, so 15 days may come and go. You can apply for an extension, as is stated in the other subsection. Those considerations will be made.

Section 10 agreed to.

L'article 10 est adopté.

Section/article 11:

Ms S. Murdock: Section 11 is section 51 of the act. Subsection (1a) eliminates officers from the section, as has been done throughout the bill, corrects a cross-referencing error, because it should have been subsections (8) and (9) instead of (7) and (8), and limits the liability of directors to wages and vacation pay only.

Under subsection (1b), directors are not required to put any money in trust; employers are. Under subsection (1c), the employer is to provide a summary of its argument. When an employer disputes a worker's entitlement to wages in a section 51 review, the employer must provide a summary of his argument prior to the hearing before the referee. Subsection (1d) is the expedited hearing within 45 days after a referee is appointed to hear a case. Subsection (1e) is again interim orders for unpaid wages. Where a referee finds that a certain portion of the wages owed are not in dispute, the referee can order to pay the undisputed portion. Under subsection (1f), the referee's decision is to be issued within 90 days. That covers all of section 51.

Mr Offer: Under (1c), "Where an employer disputes the entitlement of a worker to wages...it must provide a summary of its argument prior to the hearing before the referee." Is it taken that the employer receives a hearing as a right notwithstanding the reasons for it?

Ms Muir: Yes.

Mr Offer: Is there any corollary requirement to the employee to respond to the summary of the employer?

Ms Muir: No.

Ms S. Murdock: Just to clarify further on that, if the referee feels that in the particular circumstances of that case no written response or summary is necessary, they can be waived.

Mr Offer: I do not know where that is permitted. Oh, it says "unless the referee waives this requirement." Okay. A question under section 51, which is the review section: Would there not be an order against the employer and that order is potentially under this section reviewed for a variety of reasons? Is that what section 51 is about or is there something else?

Ms S. Murdock: For a variety of reasons? This requirement extends it to disputes over compensation for violations of Sunday work, lie detector tests, pregnancy leave. It does extend it to that but I will let Laura, our legal counsel, respond to that.

Ms Hopkins: Section 51 of the act is used in the situation where no order has been made. If an order has been made against an employer and there is a dispute about it, the employer seeks a review under section 50. If there is an order or a decision not to make an order and an employee disputes it, the employee's dispute is handled under section 49.

Mr Offer: Section 51 does not speak to a dispute as to wages, vacation pay, termination and severance. Section 51 speaks to matters in dispute over other things.

Mr Jenkins: Section 51 could cover a dispute over any entitlement arising under the Employment Standards Act. It is basically used, as counsel said, where a decision

is made not to issue an order. Section 51 is more in the nature of a reference which goes before a referee who decides the matter.

1100

Mr Offer: But what would the subject matter of the reference be? And in that regard, I am asking, would the subject matter of a reference under section 51 ever be entitlement to wages, vacation pay, termination and severance?

Mr Jenkins: Yes.

Mr Offer: Or are those things carried in a section 50 or 49 review?

Ms S. Murdock: Under section 51 it could be wages, holiday, severance, termination, Sunday work, pregnancy leave. It could be any one or a combination of those within that.

Mr Offer: Under section 50 or 49 there are reviews of the entitlement under the proverbial wage protection plan.

Ms S. Murdock: Where orders have been made.

Mr Offer: Where orders have been made. In the event that an order is not made, then a section 51 reference may take place. I do not follow that. It does not seem right. Something seems to be missing here. Help me out.

Ms Muir: A section 51 review is not initiated by the employee or the employer. It is initiated by the director of the employment standards branch. So the subject matter of the review under section 51 could be any violation of the Employment Standards Act, could be non-payment of wages or any other potential violation of the act, but it is initiated by the employment standards branch itself.

Mr Offer: The only thing I am trying to grapple with—and it must be me this morning—I see there is a process of determining entitlement, a process of appealing that determination, and I see that can be done by an employer or an employee, a director in section 49 or 50, and those section 49 and 50 types of reviews focus in on the employee wage protection plan.

Section 51 speaks to, in my mind, something broader than the wage protection plan. The entitlements and the final determination are decided under previous sections. Section 51 talks about whether people have a grievance, whether they are working on a Sunday, or whether they have been forced to take a lie detector test or all those other things, but it is not the wage protection plan. All I am asking is, is that correct? Because these are not matters which are kick-started by an employer or employee, director or whomever, but kick-started by the employment standards branch.

Ms Hopkins: Section 49 is not wage-protection-plan-specific; it is a general review power about orders. Once an order has been made, there may be implications for the wage protection fund but it does not necessary follow. So section 49 is the general review process available to employees. Similarly, section 50 is the general review process available to employers independently of the wage protection fund. After an order has been made there may be some implications but section 50 is not tailored to the wage protection plan. Similarly, section 51 may have implications

for the wage protection plan but it is not directed specifically at it.

Mr Offer: The difference between sections 49 and 50 is that they are commenced by an employer or employee and section 51 is commenced by the employment standards branch.

Ms Hopkins: That is true.

Mr Offer: Why is this section necessary?

Mr Jenkins: In general terms, section 51 is used when there is a novel point of law. For example, where the branch is not entirely sure whether an order to pay should be issued, in those circumstances it will not issue an order to pay; it will proceed to section 51 which is, as I said, in the nature of a reference. There is no requirement for the employer to put the money into trust in advance of a section 51 hearing such as there is in a section 50 hearing. So section 51 might be used where there is a novel point of law involved.

Ms Hopkins: The point that I found confusing when I first approached this was trying to decide when someone is not making an order because there is not an entitlement. If the employment standards officer says, "I'm not going to make an order here because you, employee, are not entitled to anything from the employer," then the employee seeks a review of that decision under section 49. It is a clear decision by the employment standards officer. When the employment standards officer says, "I'm not going to make a decision here because I'm not sure and I need a clarification of that novel point of law," that is when the employment standards officer under section 51 will say to the director, "I think we ought to have a hearing here and sort this out." Does that help?

Mr Offer: It takes me into the world of strange. It is better I say nothing. This is permissible now, is it not? What we are doing is expanding this. Since there are no other questions, it just must be me this morning.

Mrs Witmer: What presently happens when there are disputes over compensation for violations of Sunday work or lie detectors or pregnancy leave? What options are there?

Ms S. Murdock: They still appeal under the Employment Standards Act for payment for that or redress if they have been terminated or whatever.

Mrs Witmer: So what is new and different?

Ms S. Murdock: I really do not know the details so I will let legal counsel go on that as well—she is smiling.

Mr Jenkins: You want to know what is new and different in the appeal process?

Mrs Witmer: What is new and different in disputes over compensation in those three areas: the Sunday work, the pregnancy leave and the lie detectors? Why are we including this here? What is going to be done differently?

Mr Jenkins: Disputes concerning orders made under those sections will be heard as before by a referee under section 50 or under section 49. If the employment standards officer refuses to issue an order, it will be heard by an adjudicator. The basic system is not changing except for

the institution of adjudicators to hear employee appeals and the expedition of the employer appeals. Other than that the appeal system should be as before in general terms.

Mrs Witmer: In regard to the people who it is determined have compensation due to them, where does that money come from if there has been a violation?

Mr Jenkins: In a section 50 appeal, the employer will be required to put the money into trust in advance of the appeal. Depending upon the results of the appeal, the money will either be returned to the employer or distributed to the employees in accordance with the decision.

Mrs Witmer: But if the employer does not have money, then the directors are liable?

Mr Jenkins: That is right. A director can appeal an order without putting money into trust.

Mrs Witmer: So this really is a little bit different.

Mr Jenkins: The amendments to section 51 which we are considering now, as I mentioned, are not an appeal but a reference and do not contain any requirements to put money into trust by any of the parties.

1110

Mrs Witmer: The question I have is, if it is determined that you must compensate someone for Sunday work or lie detector, or pregnancy leave, is that money coming out of the wage protection fund in any way, shape or form? It is being advertised as compensation when companies go bankrupt, etc. Are these people going to be reimbursed out of that particular fund as well?

Mr Jenkins: To the extent—

Ms S. Murdock: Not out of the wage protection plan. For Sunday work—that is what you are asking, are you not? If part of the order or part of the review was on Sunday work or pregnancy leave or whatever other matter other than wages or holiday pay, termination or severance, only the wages, holiday, termination or severance would come out of the EWPP. The allocation for Sunday work, if that was the disputed issue, would come out of the employer, but it would not come out of the EWPP.

Mrs Witmer: I would like to have that confirmed. I am not sure that is what is being said here.

Ms Muir: If you could just refer back to section 40b, which is a section that we have already passed. It talks about the definition of wages for the purposes of compensation. Clause (c) there indicates "compensation awarded under sections 39, 39c and 39f and clause 39k(3)(b) and section 39m in so far as the compensation is awarded for loss of earnings and for termination pay and severance pay." So where there is an award made in regard to a violation of the provisions respecting pregnancy leave or any of those other enumerated sections, that amount could be payable as compensation under the EWPP.

I would point out, however, that directors would not be liable for amounts that are payable as compensation in regard to any of those sections, because directors are only liable for actual wages owed. They are not liable for certain amounts under these sections that might be classified as deemed wages.

Mrs Witmer: But the money is going to come out of the employee wage protection plan.

Ms S. Murdock: I stand corrected because I was not making the connection, strangely enough, that if I was an employee and I was disputing Sunday work and it was determined that I was owed for the Sunday work I had done, then that obviously is wages and it would come under EWPP.

Mrs Witmer: And pregnancy leave.

Ms S. Murdock: If it is determined that it is wages. If I was terminated employment because I was pregnant and it was shown that was the case and if that was deemed wages I was owed or defined as wages under clause 40b(2)(d), then that would come under EWPP. I do not know about lie detector tests.

Mrs Witmer: I would appreciate a little bit more information about lie detectors. I am not sure why this is here. I guess we did not deal with that section 39 yet.

Ms Muir: There is a clause in the Employment Standards Act that refers to the illegal use of lie detector tests and how employees can seek redress where they have been dismissed presumably or have suffered some kind of employment penalty because of their refusal to allow a lie detector test. It is just a reference to that. They are not changing that section. It just refers to compensation that might be payable under the circumstances.

Mrs Witmer: I have a little concern about the extension and the inclusion of these areas. It is certainly a little different, I think, than the public perception about this wage protection fund. This wage protection fund was supposedly hailed as a fund that was going to help those employees who suddenly found themselves without a job and without compensation from their employers. Now it is being used to include other violations as well. I am really concerned that taxpayers could be subject to additional amounts of money that they had not even imagined they would be.

Ms S. Murdock: I would not agree with that because, yes, it is the establishment of the wage protection plan, but it is amendments to the Employment Standards Act, in which those areas are already covered. But it needs to be stated in reference to the sections that it is going to be dealing with. Laura has some further explanation on that, but the bill we are discussing is an amendment to the Employment Standards Act in which the employee wage protection plan is being established.

Mrs Witmer: I understand we were going to get some additional information.

Ms S. Murdock: Yes.

Ms Hopkins: In relation to section 51 here, the reference to the other kinds of entitlements is intended to make sure that a hearing can deal not only with money orders made by employment standards officers but also with the other kinds of orders that employment standards officers might make, orders like reinstatement if you have been improperly fired as a worker for failing to take a lie detector test, for example. So the result of making the change that's proposed here is to make the review more comprehensive

in order to protect employers and employees against non-money decisions that would otherwise be unreviewable.

Ms S. Murdock: Just another clarification on that, because I think it is important. I did not realize—it seemed so straightforward to me when I was reading it. This makes it quite clear that in these review mechanisms and appeal procedures, the adjudicator or the referee would have the power, that it is inclusive and you do not have to go to two different places to get individual things done. I just think it is a clarification, but I obviously was wrong.

Mrs Witmer: I guess I would indicate again that I am really concerned about the possibility of additional money coming out of the wage protection fund, a fund that is going to be financed by taxpayers. It is certainly going above and beyond what it was originally hailed to do, which was to help employees who found themselves out of work and without an employer to reimburse them.

Mr Offer: On the issue of the lie detector question, if an employee has been asked to take that test, whether he does or does not, is there a monetary award that may result as a result of the lie detector issue?

Ms S. Murdock: I will stand corrected if I make any errors or do not state it clearly enough. If the employee refused to take a lie detector test and as a consequence of that refusal was terminated, then of course the mechanisms go into place for him to appeal that decision on the basis of what the ESO determines, or whatever. So that portion would come under EWPP. But if there were damages as a cause of that, no. EWPP does not pay damages; it only pays the provisions as stated under section 40b, and what are determined to be wages in that particular section. I do not think there is any other way of saying that.

Mr Offer: My next question is, what happens now? Where does that employee get the dollars now?

Ms S. Murdock: You have to go against your employer for it in court.

Mr Offer: Does this bill permit, by regulation, expanding the type of issues such as lie detectors, such as this, such as that?

Ms S. Murdock: No. This is the Employment Standards Act. I am not sure, but I think I am hearing that there is a differentiation being made between an employee who loses his or her job due to a closure of a plant and an employee who loses their job on an individual basis for whatever reason. Regardless of how your job is terminated in those individual kinds of examples, you still come under the Employment Standards Act, and if wages, vacation pay, termination or severance are involved in any way, then you fall into the employee wage protection plan. I do not know if that clarifies anything. Kerith may be able to help out a little bit more here.

1120

Mr Offer: With the lie detector issue—let's not use the lie detector issue, but we can use the Sunday shopping issue—how would that kick in?

Ms Muir: If you are owed wages because of a refusal to work on Sunday, then potentially there might be an entitlement for compensation for those owed wages. But in

any of the circumstances where there has been a violation of the act and you are owed wages as defined—so that would be wages, vacation pay, severance, or termination—there would have to be an order from the employment standards branch issued. That order would be issued against the employer.

Mr Offer: My thought is if somebody loses wages somehow as a result of the Sunday shopping legislation—they may not lose their job, but they lose wages for a day or two—what do they do now? Can they access the fund for wages which emanate out of a discussion over whether or not to work on Sunday when they are still holding the same job?

Ms Muir: The employment standards officer is going to issue an order to pay only in circumstances in which the Employment Standards Act has been violated. So if you are asking if people lose two days' pay because they refused to work on a Sunday, that is possible.

Mr Offer: The concern that I think we are getting is that there seems to be an expansion over who and what is eligible for the fund. I think there is this thought—and if this is incorrect, then we had better clear it up—that people lose jobs; they have lost them because of a bankruptcy, insolvency or whatever, but they have lost the jobs, and they have certain entitlements under the Employment Standards Act—termination and severance, vacation pay and their wages—and they should not be out of those things they are entitled to. But what we are now talking about is something in principle much larger than that.

You may say, "What's a couple of days' Sunday shopping or what's taking a lie detector test?" The principle is crucially important because it is a key to opening an extremely large door. It is expanding the fund to something that I believe an awful lot of people do not recognize. If you think that by allowing somebody to get a couple of days' wages as a result of some contravention of the Employment Standards Act over retail business hours or a lie detector—if you do not think that is not a major expansion in terms of its potential over the fund, you are just way, way off base.

What is this fund designed to recompense? Is this fund designed to look at wages, vacation pay, termination, severance, or is it designed to look at those things plus potentially a lot of other things? And those other things are when the person still has his job; the person has not lost his job. He may have lost two days' wages, but he has not lost his job. I believe a lot of this bill is premised on the fact that not only have people lost the things, but they have also lost their jobs.

Mr Wood: I think in explanation to Mr Offer, there is some misunderstanding on the part of some of the people over there. Wage replacement is for companies that go into receivership or bankruptcy. This is what the fund is for, what the \$135,000,000 is set out there for. If the company is still operating and is solvent, there might be money put out for it, but it is going to be reimbursed through the court, one way or the other, and it is going to be reimbursed into the fund.

All you are talking about here is replacement for bankruptcy or receivership. It is not to be expanded into these other areas as far as using the fund for that, as far as I can gather from the way I understand it. It would be the same as what it is right now. If an employee makes an appeal that he has lost two or three days' pay or something like that, he goes through the courts or he goes through the Employment Standards Act and he gets his money out of the employer. I hope that clarifies it.

Ms S. Murdock: Yes. Exactly that. The EWPP is predominantly for those people out of work due to closures for whatever reason: that the employer has had to declare bankruptcy or has had to close or has taken flight. In all other circumstances, for lie detectors or pregnancy leave or whatever, if the employer is solvent, there is no change. You just still go through the same procedures, and if there is an order to pay, the solvent employer has to pay. If it is not paid, the employee can get the money, but then the director goes after the employer for reimbursement.

The Chair: Mr McLean, did you want to join this dialogue?

Mr McLean: Yes, I would like to get into this dialogue because the member had just indicated that this bill was primary for a specific purpose. What is the rest of the bill for that is not primary for the wage legislation? Why is there compensation in here for disputes for violation of Sunday work? Why is there compensation in here for pregnancy leaves and lie detectors?

Ms S. Murdock: It is not compensation. It is powers given to the referee.

Mr McLean: What has this got to do with a company that has gone bankrupt?

Ms S. Murdock: Under the Employment Standards Act, the application for the referee—I am going to let legal counsel explain this because I am obviously not explaining it properly enough. I guess it is because I am not seeing the problem. I am sorry; I am just not understanding what the problem is.

The Chair: Prior to giving the floor over, I might suggest to people that the title of the act and the explanatory note provided as a part of the act may well be revealing.

Ms Hopkins: I was going to make the same suggestion, that there would be a helpful outline of the issues addressed in the bill in the explanatory note. I have a copy that I am pleased to give to Mr McLean if that would help him.

Ms S. Murdock: I have a feeling that this still is not clear. Might I ask for a five-minute recess?

Agreed to.

The committee recessed at 1130.

1139

Mrs Witmer: I would like some clarification about the discussion we have just had about the extension for compensation for violations of Sunday work legislation, lie detectors and pregnancy leave. Is it now my understanding that if an employee is employed, he can apply to the fund and receive compensation from the fund while

still working if the employer refuses to compensate him for this?

The Chair: Perhaps the counsel will respond to that.

Ms Hopkins: Yes.

Mrs Witmer: I am very, very concerned about what has been done here. I believe that the government has always indicated that this bill was to compensate those employees who lost their jobs, were not employed. I now hear that the employee wage protection fund, which is going to be funded by the taxpayers of this province, will indeed give compensation to those individuals who are employed and receiving wages. I really would like an explanation as to why this is being included at the present time.

Mr Klopp: On your first part, when you are saying that people who are employed are going to get money out of this paid by the taxpayers, then I agree. That concerns me, but the answer that I understood on that point is "No, the employer reimburses the fund." So the taxpayer is not getting ripped off. That is my understanding on the first part. On the other part, you can explain the rest. Why has it been put in? It is an interesting question.

Mrs Witmer: Why is an individual who is employed going to be able to access this fund? I thought this was only for those individuals who had lost their jobs. When Mr Rae first made the announcement, it was certainly based on that premise. It was to deal with all of those people who had lost their jobs during this recession and had no avenue to regain and receive the compensation due to them. Now we hear that you can be employed and still access this fund. Yes, the employer will be asked to reimburse the fund, but again, there are going to be additional administrative costs involved. I am very surprised that this has been included at this time. I am disappointed.

The Chair: Based on advice that I have received, confirmed with a copy of the bill endorsed by the Clerk of the House on April 11, the matters about which concern is being expressed now were a part of the bill on April 11, 1991. I simply raise that as advice I have received and to assist those participating in this discussion.

Ms S. Murdock: I almost wish I could get a recall. The primary purpose but not the only purpose of the employment wage protection program, is to assist those people who are out of work in situations where employers have had to shut down, as has been stated time and again.

Encompassed in the Employment Standards Act is the right of the employee, employed or unemployed, to have access to that act. This is a situation where yes, you could be employed and have a complaint against it for non-payment of a wage portion. If the employer is solvent, in general the employer is going to pay, but if the employer does not pay, yes, then that is correct. What has been said earlier is that the employee then would be paid by the fund and the director would go after the employer for repayment and reimbursement into the fund.

I have been advised that in the past 10 years there have only been two lie detector cases; since the previous Sunday shopping legislation was in there, there have been 10 cases brought before the ESB. I do not know about pregnancy

cases, but I imagine they would be more frequent. Just because it does not happen often does not mean it should not count for anything. If the impression is that the wage protection program is only and exclusively for unemployed workers, then it is a perception that is erroneous. I mean, just the name of it alone, employee wage protection program, says it.

Mrs Witmer: I would just like to quote from the minister's remarks when he spoke to us on July 29. He indicated, "It is one of the most important steps this government has taken to ease the damaging effects of the recession...and to help workers through these difficult times." Certainly the impression created by the minister and the government is that this was a fund that was going to be accessed by those workers who were owed wages. He goes on to indicate he has already received 15,000 potential claims.

You have just indicated that not many people have applied for compensation because of lie detectors and what have you. Once people become aware they can do this, I can assure you there will be many individuals applying for some sort of compensation. I think the wage protection fund is going to cost the taxpayers of this province far more money than originally intended and it is going far beyond the scope most individuals are aware of. I suspect that most of those who made presentations to this committee were not aware that this was going to be included. I do not believe that most people understood you could be employed and still access this fund.

Mr McLean: I have some other concerns I wanted to raise, and one is the dispute entitlement of a worker with regard to the money being put into a fund before a hearing is held. Is it a fact that the money is put up before the hearing is held?

Ms S. Murdock: By an employer?

Mr McLean: Yes.

Ms S. Murdock: Yes. It is in trust.

Mr McLean: I have one other. We refer here only to directors, the board of directors; it is not officers any more. Directors are usually paid a wage or stipend by the board that they are directing.

Ms S. Murdock: None of the boards I sat on, but yes.

Mr McLean: What happens if the company says now it has a board of officers and not directors? Where would they qualify in this bill? I have a "board of directors" now and I am going to change that board to a "board of officers."

Ms S. Murdock: Under the Ontario Business Corporations Act, you would have to follow the provisions under that legislation. If the requirements of that particular piece of legislation require you to have a certain list of names, be you to title them officers or directors, it would come under—this act is tied so closely with OBCA that I do not think you would be able to get away with it.

Mr McLean: This bill is directed towards companies and corporations.

Ms S. Murdock: Incorporated, yes.

Mr McLean: Now we find out these other provisions in this act, which deal with what Ms Witmer has just indicated.

Ms S. Murdock: That particular aspect has not been changed. It is just that—

Mr McLean: Were you aware that this bill covered those other people who are still employed?

Ms S. Murdock: Yes. I never understood anything any differently. I guess that is why earlier in the discussion I was not understanding what the problem was, because any employee has access to this fund.

Mr McLean: Is there anywhere in the Hansard reports of previous meetings and hearings that have been held where you have indicated the broad scope of what this bill covers?

Ms S. Murdock: No. I do not remember this ever being raised by anyone. I mean, I personally do not remember.

Mr McLean: I guess you were hoping that it did not get raised, I guess that was the whole thing.

Ms S. Murdock: No, do not impute any motives here because that is not the case at all. I did not see it in truth as a contentious area.

1150

The Chair: Does Mr Offer have yet another observation to make?

Mr Offer: I think the concern is that we read the bill in a different way. We are all now reading the bill in the same way and there is a concern as to that reading. The concern we are expressing is that on one hand there is the message that this fund is for people who are out some wages as a result of their company closing up. They are not working for that company any more. They are the victims of the recession.

The bill, however, does not read that way. It reads that they can still work for the company. They may be out two, three or four days' pay, but they can access the fund as well as the employee who is a victim of the recession. I think everybody agrees that that is how the bill reads, and there is a concern as to whether that is in fact the way the bill should read.

We have stood down the opening sections of the bill, which talk to a contravention of the Retail Business Holidays Act, where an order can be made in an amount not exceeding \$4,000—that, I think, is going to be raised potentially to \$5,000—in lieu of reinstatement for loss of earnings or other employment benefits.

The concern that arises is that an employee who may be wrongfully dismissed as a result of the Retail Business Holidays Act and is out of a job will be able to access this fund for wages which resulted from a contravention of other provisions of the act.

I do not believe the minister or the Premier has ever said that this fund is to be used in this way. I believe they have always, if not stated, certainly intimated that this is a bill that is required as a result of the many thousands of jobs being lost as a result of the recession.

The message being given by the government and the words of the legislation do not jibe. They are not the same. I think you have to accept that. They are just not the same,

unless someone from the government side can show me a single sentence that has ever been stated by any member of the government, from the Premier on down, that this bill can be used for any contravention of the Employment Standards Act.

Ms S. Murdock: We will certainly look over lunch-hour. Let me tell you, if I find one word, let alone sentence, stating that, I will be happy to show it to you. I just want to state that if the impression is—and I am hearing that from the members opposite—that this is a bill for the purposes of the recession, it is legislation that is going to be in place regardless of whether there is a recession or not and it is employee-directed.

Yes, it is true that I do not think we made—I do not recall anyway—any distinct statement saying that it was for everyone. My understanding has never been that it is strictly for people in a bankrupt or insolvent position. It is for workers who, for whatever reason, do not have a job or have not been paid for work done. If you are still employed and there is a section of your period of time that you have not been paid for work done, then you are still eligible under this plan. I am not going to say any more. The Chair should be happy to hear that.

The Chair: I suspect that Mr McLean wants to make a very brief response to Ms Murdock's most recent comments.

Mr McLean: I have a very brief clarification that I would like. If I worked in a Mike's milk store on a Sunday and I thought I was getting double time and I got paid for normal time, could I then go to this fund?

Ms S. Murdock: No, you do not—

Mr McLean: I can appeal.

Ms S. Murdock: Yes. Right. You do not go to the fund. It is not an automatic payout system. You have to go through an employment standards officer, who determines whether you are owed any money.

Mr McLean: That is right.

Ms S. Murdock: It may be determined that you are not owed a penny and then you do not have any left. Then you can appeal under section 49.

The Chair: Ms Murdock might go on to say that if then the employer is no longer solvent—

Ms S. Murdock: Yes, if the employer is no longer solvent then it comes out of the fund. If the employer is solvent, you get it from the employer. In most instances the employer is going to pay. If the employer does not pay, yes, your concern then clicks in.

Mr McLean: Who is paying for the time of that person to do the inspection and look into that condition?

Ms S. Murdock: It is already being done now. That is what the employment standards officers are doing.

The Chair: All of that having been said and there having been a full and complete debate of section 11 of the bill, along with virtually every other section of the bill, shall all of section 11 of Bill 70 carry?

Section 11 agreed to.

L'article 11 est adopté.

Ms S. Murdock: Since I see it is coming near to lunch, rather than introduce a new section I would just note that we have handed out the three motions that cover the parts that were stood down the other day, subsection 40e(2) and the construction section, 42qb, and an amendment to subsection 65(1). I just wanted to bring to the attention of the members opposite that they do have them and I hope the lunch-hour will be used wisely.

The Chair: Is section 12 of the bill self-explanatory? Are there any questions on section 12? Shall section 12 of the bill carry?

Section 12 agreed to.

L'article 12 est adopté.

The Chair: I propose that having dealt with section 12 we recess for lunch until 2 pm.

The committee recessed at 1159.

AFTERNOON SITTING

The committee resumed at 1404.

The Chair: Mr Waters moves that the amendments contained in the copy of Bill 70 as reprinted by the ministry be deemed to have been read and moved by Sharon Murdock.

Mr McLean: Mr Chairman, I think the amendments should be read into Hansard so that we know what they are. Are these the three amendments?

The Chair: There had been an agreement by the members of the committee during its first week of hearings that the bill as reprinted—not the amendments that are being presented today but the bill as reprinted in the Queen's Printer for Ontario copy that you have before you—was agreed upon in that traditional format. You are quite right, Mr McLean; it would be entirely inappropriate for that motion to apply to the motions that the government proposes to make today. You are 100% right in that regard.

Motion agreed to.

The Chair: I will also advise people that they have received, I am told, copies of motions that the government intends to move this afternoon. Among those is what would appear to be a duplicate but in fact is a second version of the same which corrects a typographical error as to identifying clauses which the government will be moving amendments to.

Section/article 13:

Ms S. Murdock: Subsection 54(1) deals with a certificate. It is a provision that ensures consistent enforcement of orders to pay unpaid wages, and the issuance of the certificate makes an order to pay enforceable by a court. With regard to subsection 54(2), this amendment adds directors to the parties who must be notified when a certificate is issued ordering payment. That is all for section 54.

Section 13 agreed to.

L'article 13 est adopté.

Section 14 agreed to.

L'article 14 est adopté.

Section/article 15:

Ms S. Murdock: I have a government motion on subsection 65(1).

The Chair: Perhaps prior to the motion you could briefly identify what the government contends the purport of section 15 is.

Ms S. Murdock: It is a regulation-making authority. Regulations may be made about the definition of wages, criteria for seeking repayment of overpayments, payment of interest, consolidation of hearings and apportionment of compensation. The amendment corrects cross-references to the definition of wages and provides authority to revise the employee wage protection program ceiling by regulation. Do you want me to go through the clauses?

The Chair: As you deem appropriate.

Ms S. Murdock: Clause 65(1)(rb) permits the addition of other forms of compensation to the definition of wages.

Clause 65(1)(rc) provides the creation of criteria to be used by the administrator when he or she decides whether to seek repayment of compensation to which a worker is not entitled. Criteria in the proposed regulation might include financial hardship, use of fraud or collusion to obtain payment, administrative error and other factors.

Clause 65(1)(rd) provides for a regulation specifying circumstances under which interest will be collected and paid and the rate at which payments will be made. This provision ensures that a policy about interest payments may be developed after the bill is proclaimed.

Clause 65(1)(re) facilitates the consolidation of hearings under the act. Where more than one order to pay unpaid wages is filed against directors and the employer, it may be preferable to consolidate the hearings. This amendment allows the director of the employment standards branch to consolidate proceedings on the basis of criteria to be set out in regulations. Consolidation of hearings may also be relevant where directors have filed individual appeal applications and when both an employee and an employer appeal have been filed.

Clause 65(1)(rf) contemplates a regulation to apportion compensation between wages, vacation pay, termination pay and severance. This means that where a worker receives a payment from the program, he or she will receive a statement breaking the payment down into those categories. The federal unemployment insurance program will use the amounts designated as severance and termination pay to extend a worker's waiting period before entitlement. This regulation may also be significant for integrating EWPP and any federal wage protection program that might be resultant.

Clause 65(1)(rg) permits regulation to specify the maximum EWPP compensation.

1410

The Chair: Ms S. Murdock moves that subsection 65(1) of the act, as amended by section 15 of the bill, as reprinted, be amended by adding the following clauses:

"(rh) prescribing persons or classes of persons for purposes of section 40qb;

"(ri) governing the conditions that must be met before there is a deemed assignment of compensation under section 40qb and the restrictions that may be placed on such assignments."

Mr Offer: On a point of order, Mr Chairman: I ask whether that motion is in order, because we have stood down the actual section. I do not know if we can move a regulation to a section that we have not yet passed. We have had enough surprises this morning.

The Chair: That is a point well made. What is the response of Ms Murdock to that well-made point?

Ms S. Murdock: It is a very well made point. We should probably go to section 40qb in order before we

enact, but I leave it to the discretion of the Chair since I am new at this. I cannot do that?

The Chair: The Chair has modest—

Ms S. Murdock: Authority?

The Chair: —discretion and has occasionally been accused of being indiscreet. As a matter of fact, much has been made of some of my indiscretions. The suggestion is that we stand down section 15 of the bill.

Ms S. Murdock: Yes, I suggest that we do.

The Chair: Consent?

Mr Offer: Are we talking about the amendment that you have read or the section?

Ms S. Murdock: Oh, I see. We could go that way too.

Mr Offer: Because it would just seem to me, just as some friendly advice, that we could deal with section 15. When that is finished, then go back to section 40qb and then go back to your amendment.

The Chair: I appreciate the advice, but it would seem that would deal with section 15 of the bill in a piecemeal fashion. If you are going to deal with section 40qb, deal with section 40qb and then come back to section 15 and everything it might entail, not just for the government but for other persons on the committee who have things, I am sure, to say about section 15 and perhaps motions to make. So are you suggesting that it be stood down? I understood the consent to be unanimous. Consideration of section 15 of the bill is stood down.

Do you wish, in view of having stood down two earlier parts of the bill, to revert to those now or do you wish to carry on with the balance of the bill?

Ms S. Murdock: Where are we in terms of the balance of the bill? Sorry, section 16.

Mr Offer: Your call.

Ms S. Murdock: I think we should go to section 40 of the act and then go back to section 65 and finish it that way.

Section/article 5:

The Chair: There are two parts of section 5 of the bill, section 40e and section 40qb. We are on page 3 of the reprinted bill, what is stated as being section 40e of the act if the bill passes.

Ms S. Murdock: Thank you, Mr Chair. Never having done this before, I need some direction here. When there are, as in this case, three subsections of a section and we are going to be asking for a motion to amend one of the subsections, what is the procedure? How does one do that?

The Chair: I suppose there would be 1,001 ways to do it. By way of suggestion only, why do you not move the motion amending section 40e, specifically subsection 40e(2), and then deal with all of section 40e and its three subsections? Far be it from me to tell you how to do it.

Ms S. Murdock: I asked for directions, so I thank you for that. That sounds like the way you go about it.

The Chair: You have another—

Ms S. Murdock: Government motion.

The Chair: Fine, that is the government's motion, because there are other people who wish to make motions with respect to section 40e. Let's go ahead, government motion first.

Ms S. Murdock: This is going to get confusing, I can tell.

The Chair: Ms S. Murdock moves that subsection 40e(2) of the act, as set out in section 5 of the bill, as reprinted, be amended by striking out "less the amount already paid" in the fifth line.

Your argument on the motion?

Ms S. Murdock: It is a technical matter of administration. It was felt that the way it was worded, the interpretation could be—I guess it is easier to use numbers here—that since the cap is \$5,000, if an employee was paid \$500 by the employer but was still owed money, the \$500 would be deducted from the \$5,000 cap instead. Suppose the order was for \$6,500 and the employee had already received \$500 from the employer and the employer then could not pay any more. The way this reads, with those words there, it would be that he would receive \$5,000, less money paid, which would be \$4,500, instead of \$500 off the order to pay.

Mr Offer: We are discussing section 40e right now?

The Chair: Yes, sir. We are discussing Ms Murdock's motion.

Ms S. Murdock: Subsection (2).

Mr Offer: May I ask what happened with subsection 40e(1)?

The Chair: We will discuss and deal with subsection 40e(1). It is a government amendment and Ms Murdock made her motion amending subsection (2) of section 40e.

Mr Offer: Okay. We have not done anything with subsection 40e(1) though, right?

The Chair: No, and you will be invited to at the right time and so will Mrs Witmer. All in favour of Ms Murdock's motion, please indicate. Opposed?

Motion agreed to.

The Chair: There are notices of motion from Mr Offer and from Mrs Witmer. Subject to what the committee might direct, I suggest that Mr Offer's motion is more appropriately dealt with next.

Mr Offer: Thank you, Mr Chair. I believe it has just recently been circulated.

The Chair: Mr Offer moves that clause 40e(1)(a) of the act, as set out in section 5 of the bill, as reprinted, be amended by striking out "by a court" in the third line.

1420

Mr Offer: If I might explain, yesterday I circulated an amendment which spoke to this matter. I am just trying to find it again; I can hear it coming. The amendment which I circulated yesterday stated "by striking out 'receiver appointed by a court with respect to the employer' in the fourth and fifth lines and substituting 'employer's receiver.'" After some discussion, it was felt that the new amendment, which has now been circulated, is more appropriate. Let me tell you why I am moving this amendment.

The bill as it now reads speaks to the issue of a receiver appointed by a court. This, of necessity, will exclude all other receivers. There are in existence other receivers. There are receivers appointed by statute, there are receivers appointed by a court and there are receivers appointed by contract, certainly through, for instance, a loan arrangement which will talk to the issue that in the event a receiver is needed, they appoint a receiver. The bill as it now stands will exclude receivers under statute and will exclude receivers under agreement found within a loan document. I believe the particular bill is not meant to exclude those people as such. I think this motion will make certain that those receivers who are appointed either by statute or by loan agreement will also be included. This motion makes that possible.

Ms S. Murdock: I am still digesting this. Where there is a privately appointed receiver, right now, as I stated I believe yesterday, the way it stands under the Employment Standards Act is that it is considered then that there is still an existing employer, and an order can be issued against that employer. When it is a court-appointed receiver, the order cannot be issued. In terms of the administrative function, and for collection actually, it is easier for us without what Mr Offer is suggesting in the Liberal motion. I would appreciate if I could have five minutes with my staff for clarification for my purposes.

Mr Ramsay: Why do we not just have them clarify it directly? You can refer to them.

Ms S. Murdock: Okay. Then I do not have to take a five-minute recess. Thanks. I do not know all of the ramifications of how the process works.

Ms Muir: Given the fact that it is possible, where there is a privately appointed receiver, someone who is appointed as a result of a security arrangement or if one of the creditors gets nervous about the ability of the employer to repay the loan and sends in a receiver, there is still an entity called the employer against whom we could issue an order to pay. That is a different type of problem from the problem we have with a court-appointed receiver or the trustee in bankruptcy, where we do not have the jurisdiction to issue an order to pay against the court-appointed receiver or the trustee in bankruptcy. That is why we addressed them as a special case here and why we consider it to be superfluous to specifically deal with the privately appointed receiver as a different category.

Ms S. Murdock: I think I would still like the five minutes.

The Chair: For a number of reasons, I think five minutes would be in order.

The committee recessed at 1425.

1433

The Chair: Ms Murdock, you wanted to address Mr Offer's motion.

Ms S. Murdock: As Mr Klopp says, to clarify the mud. It is no different from what I said yesterday in relation to the motion for amendment, but for clarification purposes I think our legal counsel from the ministry can explain it more clearly than I can.

Ms Hopkins: In subsection 40e(1), court-appointed receivers and trustees in bankruptcy are addressed in clause (a). The situation of the other kinds of receivers, privately appointed and appointed by statute, are addressed in clause (b), although they are not visible in clause (b). The privately appointed receivers stand in the shoes of the employer and so they are, for all purposes, the same as the employer in clause (b).

The reason we need to break trustees in bankruptcy out separately has to do with the matter of constitutional law. When we are into the bankruptcy area, then the province loses jurisdiction in some respects, so we have to treat trustees in bankruptcy separately.

The reason we treat court-appointed trustees separately is that for the employment standards officer to make an order against a court-appointed trustee might be understood to be a contempt of court, so they too are separately set out so that the wage protection program can accommodate those special needs.

The situation in which one might make an order against an employer under clause (1)(a) and one cannot be addressed in subsection (3) of this section. That is a technical subsection that will allow the rest of the wage protection program to function in those special circumstances. That is the reason those two kinds of receivers are addressed separately and the privately appointed receivers are not.

The Chair: Mr Offer, did you want to add anything?

Mr Offer: No, the points I made earlier have already been made. I can see where this motion is going, and I am not surprised, but thank you very much for the explanation.

The Chair: All those in favour of Mr Offer's motion, please indicate. All those opposed?

Motion negatived.

The Chair: Mr McLean moves that section 40e of the act, as set out in section 5 of the bill, as reprinted, be amended by adding the following subsection:

"(1a) Despite subsection (1), an employee is eligible for compensation from the program only where his or her employer is bankrupt, is insolvent for an extended period or chronically fails to pay the employee's wages."

Mrs Witmer: I think after listening to the many concerns that were expressed by the small business community during the hearings, this is certainly in response to the concerns expressed by it. They were concerned that there was going to be recourse to the fund when a small business failed to meet its payroll due to a very temporary cash flow problem. Obviously, an order to pay from the employment standards branch could prematurely bring in other creditors and then the fund could quite inadvertently force small companies into bankruptcy, so this amendment would hope to eliminate that from happening.

Ms S. Murdock: We have a problem with this in that the definitions that would be required for "extended period" and "chronically fails to pay" put us in a situation where some determination is going to have to be made as to what that means, and in actual fact I think it is administratively very difficult to apply. On that basis, we would not be able to support this motion.

Mr Offer: I was not going to make any comments, but after listening to the response by Ms Murdock, I do not think those terms and definitions are going to be any less difficult than those provisions now in the bill that talk about "prescribing other payments that are wages," "establishing criteria for seeking repayment," "providing for the manner of apportioning compensation." Those are some of the terms which you are going to be moving as soon as we finish this.

1440

Ms S. Murdock: Are you referring to section 65 here?

Mr Offer: That is right. Some of the terminology which is now in the legislation has caused the government no difficulty, and so if the government is going to be against this motion, I would hope that the reason for it would not be the wording of the motion but for some other reason which I have not yet heard.

I say this because 40e(1) contains clause (d), and that talks about some things that we spoke to this morning. It spoke about the expansion of this legislation, that it no longer just cover wages which are owed to employees who are out of work because their company has gone bankrupt and they do not have a job, they are victims of the recession. It talks about a variety of other matters, where they are, for instance, under the Employment Standards Act locked pay. Now this legislation will permit those employees, while still in the employ of another, to potentially have access to the fund. I think that is an expansion of the legislation which was not made terribly clear. I asked the parliamentary assistant if she might be able to find me one sentence uttered by any member of the government, from the Premier on down, that this legislation is to cover those matters. I would be more than pleased to receive that.

Mr Klopp: For argument's sake, and even Mr Offer has said it, maybe it was not made very clear but it always was in the act that this thing covered wage protection for people not getting paid. For the record, it was right in the bill; it has been there since April 11. The fact of the matter is that with this here, the person is insolvent or whatever, the wage protection fund can be looked at and be kicked in.

The point that I think might concern us a little bit is that maybe other people will get nervous if they are not paying their wages. But my sense is that most business people's creditors are also aware of that long before wages have not been paid or whatever. My sense is that with companies that are in trouble, the other creditors would be nervous and would be jumping in regardless of this, and the fact of the matter is the wage protection plan protects people who are not getting paid. That system starts to kick in and start to look at it. Therefore, I cannot support this motion.

The Chair: Ms Murdock, did you want to add anything?

Ms S. Murdock: Just in relation to the specific language concern that we have. That is very true in the regulation-making powers under section 65, which we have yet to pass, but in this particular section, where clause (a)

specifically deals with court-appointed receivers or trustees in bankruptcy, I think it is imperative that the language be much clearer than what this motion has before us, and that, I think, differentiates it from the situation Mr Offer has stated.

In regard to the other comment, I did not, unfortunately, bring my public hearing materials with me, but I understand that the particular issue that was raised this morning and that is being raised again here was referred to by the Canadian Bar Association during the public hearings. While it is true, and I guess we just accepted the view that all employees in Ontario would have access to this fund—and that is what was said in the press releases and we double checked that, so that was said—I do not know, and part of my problem this morning was that I did not understand what was not being understood. Perhaps we should have pointed that out, but it was pointed out in the public hearings, so it should not have come as a complete and total surprise today.

Mrs Witmer: I would reiterate once again that our caucus is very concerned about the extent of coverage within the wage protection program and the amount of money that it is going to cost the taxpayer. Not only is this wage protection fund going to be protecting those people who have lost their jobs and not received compensation from their employers, we now understand as of this morning, that those people who are employed, and because of Sunday violations or pregnancy leave or lie detector tests, although they are employed, can also receive money from the fund.

I am very concerned about what the government is intending to do. I know that the small business people are very concerned. This amendment is simply to help those people to stay in business, and I would hope that before we finish our discussion today or tomorrow, the government would support some of these amendments that are being put forward. We have listened to small business and yet we are not responding to any of the concerns it has expressed, and I am very concerned about that.

The Chair: Thank you. All those in favour of Mr McLean's motion, please indicate. Opposed?

Motion negatived.

The Chair: During the course of debating the three motions that have been made with respect to section 40e, there has been considerable debate about the overall content of section 40e. Those people wishing to engage in further debate about subsections (1), (2) and (3), as amended? Mr Offer.

Mr Offer: Just before we leave section 40e—and I can count the number of members in this room—I just hope we recognize that you are expanding the principle of this legislation.

We spoke in favour of the principle of the legislation. We spoke about how important it was to protect the wages, the vacation pay, the termination pay, the things that are earned by employees that cannot be collected because that employee is the victim of a recession. That person is no longer working at the place where he worked. This section now not only includes that but also includes potentially an

employee who is still working for the same person and will continue to work for the same person, allowing that person to access the fund, which is made up of taxpayers' dollars.

I know the section is going to pass—I mean, six government members—but just before you do it, think about whether this is in keeping with the Premier's initial statement which he made in October and whether is in keeping with the statement by the Minister of Labour when he first announced the bill and introduced the bill, and also when he announced amendments to the bill and, finally, whether it is in keeping with the statement made by the Minister of Labour to this committee at the introduction of this particular bill. He spoke about the recession, he spoke about job loss; this 40e is not job loss.

Mrs Witmer: I would just like to stress again that it now appears that Bill 70, this wage protection fund, protects any individual whether employed or unemployed as a result of a violation of the Employment Standards Act, and I am very concerned about what I feel is an expansion of what was intended and the eventual cost to the taxpayer of this province. I wonder if all of these additions were calculated. We keep hearing that there are so many claims from unemployed workers, but we now understand that those people who are employed can also apply to the fund if the employer does not come forward with the money. I just wonder how much extra money this is going to cost the taxpayer eventually. For example, is drug testing going to be included under here too? I do not know. It appears that the minister and the government have the power to do anything by regulation. They can make whatever changes they want.

1450

Mr Wood: I would just like to go back to a point I made earlier this morning. Bill 70 reads very clearly, "An Act to amend the Employment Standards Act to provide for an Employee Wage Protection Program and to make certain other amendments." The point I raised this morning was the fact that in companies that are solvent, the employer is going to be expected to pay the employees through the labour standards act. If money does come out of the wage protection fund, it is going to be reimbursed by the employers as the officers go out and do their jobs, their investigations. I cannot see where there is any extra cost, because the officers are out there now doing their job anyway. It is just a matter of certain minor amendments that were made at the same time the legislation was brought in.

The Chair: Shall all of section 40e, as amended, carry? Those in favour indicate, please. Opposed? Section 40e, as amended, carries.

Ms Murdock, has a motion with respect to section 40qb.

Ms Murdock moves that section 40qb of the act, as set out in section 5 of the bill, as reprinted, be struck out and the following substituted:

"(1) Except as provided in the Support and Custody Orders Enforcement Act, 1985 and in this section, no

amount payable as compensation under this part is capable of being assigned.

"(2) The program administrator may deem that an assignment is made if the prescribed conditions are met and the prescribed restrictions are not breached.

"(3) The number of deemed assignments respecting an employee that a person may present in any period may be restricted.

"(4) Deemed assignments of compensation are limited to additional payments as described in clause 40b(2)(d).

"(5) Deemed assignments may only be made to a prescribed person or to a person who is a member of a prescribed class of persons."

Ms S. Murdock: This is a section that specifically deals with the construction industry. As was explained in the public hearings pretty clearly—and both groups that were here explained very well—their wages, or what is classed as wages, are so different that they have to be handled somewhat differently than the separation of wages, vacation, termination and severance. In consultation with that particular industry and how the liens trustee is dealt with, in order to access, with the movement and the transience of most of the construction workers in Ontario, we had to allow a method whereby the trustee would be able to act on behalf of the employee without giving third-party access to the fund. These subsections will allow that.

The other thing is—and this is handled by subsection 40qb(3)—that where a construction worker may end up with five or six employers in any given year doing a particular job, we had to think about the aspect of how many times an employee can dip into the fund. There has to be some method whereby a restriction or prescribed criteria are going to be provided, and this gives us the right to do that.

Motion agreed to.

The Chair: The motion having passed and that amendment constituting the new 40qb, shall 40qb, as amended, carry? Any opposed? Section 40qb, as amended, carries.

Section 5, as amended, agreed to.

L'article 5, modifié, est adopté.

Section/article 15:

The Chair: This takes us to section 15 of Bill 70 and your motion with respect to section 15, which I presume you are going to move now.

Ms S. Murdock: The motion that was read earlier, is that still applying?

The Chair: Let me read it again.

Ms S. Murdock moves that subsection 65(1) of the act as amended by section 15 of the bill, as reprinted, be amended by adding the following clauses:

"(rh) prescribing persons or classes of persons for purposes of section 40qb;

"(ri) governing the conditions that must be met before there is a deemed assignment of compensation under section 40qb and the restrictions that may be placed on such assignments."

Ms S. Murdock: I have already referred to clauses (rb) to (rd). Clauses (rh) and (ri), if may take a moment here—I have so many papers.

The Chair: Is this self-explanatory?

Ms S. Murdock: I think it makes sense. Clause 5(1)(rh) just prescribes the persons or classes of persons that can be regulated or stated by regulation and (ri) governs the conditions that must be met before there is a deemed assignment.

Mr Offer: I do not yet know if this is in order, but I want to speak to section 15 as moved by the parliamentary assistant. We have an amendment to the section, but I think it is probably out of order. It is best that we just vote against the section that we want struck out.

The Chair: You are on a point of order suggesting that Ms Murdock's motion is out of order?

Mr Offer: No, I am ruling myself out of order.

The Chair: Look, somebody is going to make a motion, as I understand it, in short order, dealing with section 15. I called upon Ms Murdock to move her motion amending section 15 before the other motions were put. When I said that, I suggested that in view of what these respective motions were, that was the more appropriate, more logical way of doing it. So what do you have to say to Ms Murdock's motion?

Mr Offer: I am going to pass.

Motion agreed to.

500

The Chair: There is a motion. Notice of this motion were presented by both the Conservative caucus and the Liberal caucus. They are identical. The one that was presented first was from the Progressive Conservative caucus.

Mrs Witmer moves that clause 65(1)(rb) of the act, as set out in section 15 of the bill, as reprinted, be struck out.

Mrs Witmer: Again, this goes back to the real concern we have about the power of the government to make changes by regulation as opposed to through public consultation and public scrutiny. We want to eliminate the ability of the government to make those changes by regulation. We believe governments need to be fiscally responsible and accountable to the taxpayers they serve, certainly in any issue as important as this wage protection fund.

We are finding out on a day-by-day basis that there is none included here than we had originally anticipated. There needs to be consultation with all members of the public. The public needs to be fully informed. There needs to be adequate notice given to the public before any changes are made and any further spending takes place.

I think we heard most of the employer groups state, when they came in to talk to us, that they certainly were very opposed to the ability of government to increase the ceiling of this program or to add any other additional components to the compensation package by regulation.

I indicate again that we hope members of the government will be responsive and will understand the need to continue to be fiscally responsible to the taxpayers in this province and to keep them fully informed at all times as to what is happening.

Mr Wood: Just briefly, I think we have heard that the average being paid out now is probably around \$4,200, because of the serious recession that has hit over the last year and a half, or close to two years now, with a cap of \$5,000. I do not see any reason why, if there is another recession in a number of years from now—it could be 5, 10 or 15 years from now—whoever is in government at that time should not be able to say, "The average lost wage now would be \$5,500 or \$6,000." We should be able to bring in a regulation to adjust that for inflation or adjust it for the amount of increases that have taken place. As far as minimum wages are concerned, I believe it has been done by regulation by previous governments over the years where it was brought up from \$2 to \$2.25 or \$2.50, then \$2.75. It is done in Ontario and it is done in Quebec, basically on October 1 of every year, although we are making some further increases to make it a fairer system. All that this is looking for is to make it fairer to the ordinary working people of this province now and in years to come.

Mr Ramsay: I just want to say to Mr Wood when he alludes to the annual setting of the minimum wage, the formula was established by statute through the Legislature that it would be a certain percentage. I believe it is CPI, cost of living every year from a base. The legislators at the time agreed to a formula.

The point being made is that when you really authorize the expenditure of taxpayers' money, it should be done through the Legislature and not through the executive branch of government. That is why both opposition parties feel, in principle, very strongly about that. Any type of expenditure increase should be authorized by the Legislature of Ontario, as everything else is, and not by regulation.

The other ramification is the potential increase in cost of the premiums for directors to insure themselves for this protection. Now, through this legislation, we know what the maximum liability is to the fund and I think that has an effect, so we would like to see it established by the Legislature and not by regulation.

Mr Offer: In speaking to Mrs Witmer's motion, I recognize that it is verbatim to the motion we were going to bring forward. I think it has been said, first, that we have a role as legislators, and part of that role is to make certain the tax dollars are wisely spent, and second, that a particular piece of legislation continues to address the problems it was first hoped it would deal with.

Clause (rb) takes that right out of our control. You have absolutely no say in this. The only thing you will be able to do is to read press releases after the fact. If you think something else is the case, then I suggest you have a hard look at the difference between legislation and regulation. The general public will have no input into matters that will directly affect it.

Over the last couple of days I think we have spoken about this whole role of legislators, of MPPs, and I see that we are really into the whole regulation-making power. This regulation allows the government to expand the breadth of what is to be covered, and it may be that the areas, if they are to be expanded, are correct. That is not

the point. The point is that before that takes effect, should we allow the general public to share its opinions with us to tell us what it feels, to share with us what the implication and the effect will be and how it may or may not make for a better workplace and a more competitive province?

By allowing this to stand in regulation, you will not hear that. You will never be able to hear that. The only time you will hear anything like that will be after the fact, after it comes into existence. I think we have a responsibility, where possible, to say that should not be the case, and by taking this out of regulation, we are meeting it. By allowing it to remain within regulation, we are not. I have nothing more.

Mrs Witmer: I am becoming a little concerned about the direction this government is going. This is a government that came into office talking about consultation and the need to involve all people in decision-making. We were certainly all elected to represent the individuals in our constituencies and consult with them before we voted on issues. By taking away the opportunity for this to be discussed in the Legislature and allowing a small group of individuals to make the decisions and the rest of us to be informed after the fact, there is no opportunity to discuss this. There is no opportunity to look at the implications of any changes or increases. This is the same thing that happened before Christmas when we discussed the creation of French school boards and, again, the executive was given regulation powers, as opposed to bringing it forward through legislation.

I guess I am very surprised, because this government has talked about consultation, and yet it appears the path it is on right now is to push things through by means of regulation without any public scrutiny or public consultation and without any adequate notice. Mr Wood talked about fairness. Why would it not be fair to consult with all the taxpayers in the province before you make changes?

The Chair: All those in favour of Mrs Witmer's motion, please indicate. Opposed?

Motion negatived.

1510

The Chair: Shall section 15, as amended, carry?

Mr Offer: I would like to speak on one aspect of section 15, not just on Mrs Witmer's motion.

The Chair: Sorry, I was not trying to squeeze you out. That is why I waited and looked around waiting for people to indicate if they wanted to talk; by all means.

Mr Offer: Thank you. I think we should speak directly to clause (rg), "Prescribing a maximum amount of compensation under section 40i."

This is allowing the government to increase the maximum amount from \$5,000 to \$500,000, to \$5,001, to \$5,002; the principle is the same. Government members may shake their heads, but the principle is the same. It is allowing the maximum amount to be increased without its proceeding through the Legislature. It is allowing the government to increase the amount without the members knowing what the impact will be on the insurance policies that will now have to be taken out by every business and

director in this province. You will have no idea what the impact will be. You will have no idea what that cost will be in terms of jobs, in terms of ongoing operating expense of any particular business located in your riding, probably next door to your constituency office.

The question you have to ask yourselves is, should you not have the right as an MPP to discuss that in the Legislature? As an MPP, should you not have the right to say "This amount which is to be changed is right or wrong for these reasons; I as a member have heard these particular concerns"? These are the people in our ridings, the people who employ people in our ridings. What you are doing is saying, "I am absolving myself of the responsibility to discuss this matter."

The Minister of Labour did not feel it was improper for him to put down \$5,000 in the legislation. He expected that would be debated. People came before us and spoke about that issue. That will not be permitted any longer, because it will be done through regulation. In other words, the change of \$5,000, which will only be increased, it cannot be decreased, will be done in the absence of your input as an MPP and as a member of your community. If you think you are serving your community by saying: "I have no opinion on this; I don't have any opinion of what the impact will be on my community in terms of the cost to small business, jobs and all those other things," I disagree with you.

I ask you to vote against clause (rg). Take it out of regulation. It does not say the government cannot increase the amount. It would say the amount could only be increased if an amendment to the bill were introduced in the Legislature. Surely we cannot be worried about that.

Mr Klopp: You are making an assumption. Maybe the previous governments worked like that. I am in the new government and this is my government. I have only been on the government side, but I surely hope the minister's staff does not act in a vacuum. I assume that if anybody comes forth, he or she does not wake up some morning and say: "Today let's look at this act. We're going to change this to \$5,003."

I am assuming someone is probably going to knock on the minister's door and say, "We want this changed." If that minister is worth his or her salt, or whatever's salt, I would assume that he or she is going to do some consulting around and ask some people in the ministry: "What do you think of this? What are the ramifications?" I certainly hope that minister goes forth and asks his or her fellow colleagues what they think.

But short of that, we have a new government in down the road. They have some people who do not do those things you are concerned about, which, if I happened to be the member—which I am now, and sometimes there are things done, whether I was consulted or not. I do not hide behind and which my constituents do not allow me to hide behind that, saying, "Well, the minister did it." Whether it is legislation or full-blown hearings like this, if the people in my riding do not like it and I happen to be on the government side of things, that argument will not wash. Maybe it washes in some of the city ridings, I do not know, but it sure does not wash in rural Ontario.

The way this act is allows for simplicity, maybe even to save government money. I think there are enough checks and balances in this particular case to agree with clause (rg) and the whole bill as it stands. That is why I can support this at this time.

Mr Offer: The points Mr Klopp made are exactly the points you would make in voting against (rg). That is exactly what you should be doing. You as a member should be saying, "I recognize that the ministry is looking around at all these things," but as you said, it does not wash in our riding. Why would you not say, "Because of that, I would make certain it goes through legislation"? The argument you posed makes the point why you especially should vote against (rg).

The Chair: Shall all of section 15 of the bill, as amended, carry? Those in favour, please indicate. Those opposed?

Section 15, as amended, agreed to.

L'article 15, modifié, est adopté.

Section/article 16:

Ms S. Murdock: This is the retroactive eligibility section. It provides that the provisions of these amendments to the Employment Standards Act go back to October 1, 1990. Subsection 16(1) provides, for wages due and owing on or after October 1, 1990, that application can be made to the employee wage protection program. It is on or after: workers affected by permanent layoffs, workers owed wages for any time after October 1 and workers terminated on or after October 1.

Subsection 16(2) covers that orders to pay unpaid wages issued for that period be limited by the previously existing ceiling of \$4,000, excluding severance and pregnancy leave entitlements which exist in the current Employment Standards Act.

The Chair: Mrs Witmer moves that subsection 16(4) of the bill, as reprinted, be amended by striking out "\$5,000" in the third line and substituting "\$4,000."

Mrs Witmer: As I indicated previously, this is consistent with what is happening at the present time.

520

Ms S. Murdock: The thinking behind this was that the severance aspect was a consideration in that \$4,000 in wages, vacation and termination under the current ESA. In the transition period, if the worker has a large claim for termination and no severance claim, then he or she may receive the \$4,000 maximum.

I do not have anything further to say. There are going to be instances where it is more suitable for the \$5,000 than the \$4,000, but the \$4,000 is beneficial to the employer, so I see what Mrs Witmer is saying. But there are going to be circumstances where the maximum of \$5,000 in instances of severance has to be considered.

Mrs Witmer: The reason we have limited the maximum compensation to \$4,000 instead of the \$5,000, as has been indicated, is that this amount currently parallels the maximum liability an employment standards officer can order an employer to pay. Also, we had put forward a motion originally indicating that we wished the wage protection

fund to include only wages and vacation pay. This, of course, included holidays and overtime as well. We wanted to eliminate the termination and the severance pay from the amount covered. We looked at that figure and determined that the \$4,000 would adequately cover the outstanding wages and vacation pay since, in the discussions we had, the bulk of the money an employee will be receiving is going to be severance and termination. Approximately 90% of what they would be receiving would be severance and termination, and 10% would be wages and vacation pay, so we feel that figure of \$4,000 is adequate.

I would also like to remind the committee that the legislation being proposed here and the amount of money being made available to employees is certainly much greater than anything available in Canada at the present time. We are on the leading edge of providing compensation to employees, but I think we also have to look at the other side of the balance sheet and the impact this legislation and this amount of money could possibly have on the amount of money it is going to cost directors and small businesses to get liability insurance; the additional cost, the red tape of being involved in this program. I think we need to be concentrating on job creation, economic recovery and looking at ways to put government money to use to help employees get new jobs.

The Chair: All those in favour of Mrs Witmer's motion, please indicate. All those opposed?

Motion negatived.

Section 16 agreed to.

L'article 16 est adopté.

Mrs Witmer: I just want to be clear. What are we dealing with now?

The Chair: We have dealt with section 16. Perhaps your motion might be in order now.

Mrs Witmer: Section 17?

The Chair: No, section 16a.

Mrs Witmer: Okay, section 16a.

The Chair: Mrs Witmer moves that the bill, as reprinted, be amended by adding the following section:

"16a. This act is repealed on the earlier of, (a) the 28th day of February, 1993; or (b) a day to be named by proclamation of the Lieutenant Governor."

Mrs Witmer: The intent of this motion would be to allow for a sunset provision in order that the Legislature and the people of this province could completely review this program at the end of the first 18 months. This would ensure that all the workers who have been affected by the recession and who have lost jobs would be compensated for unpaid wages and vacation pay, and if any changes needed to be made, they could be. Also, part (b) would allow the provincial government to dissolve the program, if that was the wish, when the federal employee wage claim program, Bill C-22, comes into effect.

This amendment will indeed protect those people who have lost jobs to date, but it will allow for future discussions and allow the federal government to assume that responsibility over the long term.

Mr Klopp: I have to speak against the motion for a couple of good reasons—well, maybe three or four, but we will get down to a couple. Unfortunately, even in the good times companies still sometimes go broke. We kind of forget about it, but history has shown that every once in a while jobs are lost. This is a wage protection bill for whatever reason, in the good times and the bad, and although it was maybe brought forth quicker because of the recession we are in, like so many bills—myself in agriculture. So many times the government, when finally the fire is so danged hot, come up with a new idea. But it should probably have been done five years sooner or, heaven knows, 20 years sooner. We have to remember that.

Also, when you brought up the point about the federal government, it has been talking about a wage protection fund for 25 years. I understand they have come forth seven times reading something, probably just before elections, and then it has got lost in the shuffle. I think that proves even federal governments at one time were thinking: "We need some kind of protection for workers. Ontario is taking the stand. Let's do this."

If other things get in place, this may become a redundant bill. Heaven knows, I can only hope that happens, but to put a sunset clause in it would defeat that purpose of trying to protect workers down the road, so I cannot support this motion.

Mrs Witmer: I think it becomes obvious as discussions take place that this bill certainly was intended to deal with more than the victims of the recession. I believe that was how the government originally spoke about this bill, but I see now that this bill probably is going to be expanded in the future, the cost obviously to the taxpayers is going to increase, the cost of doing business in this province is going to increase as the compensation package is increased. If this type of legislation and protection is indeed needed, I am not sure why the government is opposed to reviewing the program at a certain time. Maybe at a certain point there might be a need to do something else to help workers in the province, as opposed to having an employee wage protection program. I am not sure why we would fear a full review of the program. If it is a good program, if it is meeting the needs of the workers, we have absolutely nothing to fear.

Mr Huget: I think Mrs Witmer is quite right, it is past a recessionary item. The principle of employees being able to collect wages owed to them is one principle that should not disappear in any sunset. It is more obvious during times of recession, but it is a principle that can readily be supported by, I believe, anyone and certainly is supported by myself and this government. So you are quite right; it is a principle that will not disappear.

The Chair: Do you feel compelled to reply to that?

Mrs Witmer: I do. I believe the government should have been honest and forthcoming when this bill was introduced and indicated all of the reasons this legislation was being proposed, and also not continually stressing the need that this was to help the poor victim of the recession, because certainly it is going to go far beyond that and I can see it expanding quite rapidly in the months ahead to deal

with other cases that occur. As I said, I have made a reference to drug tests; what is going to happen in that instance I really do not know.

The Chair: I thought you would have felt compelled to reply to that, and now you have generated the similar compulsion, I believe, on the part of Mr Huget.

Mr Huget: I am a little surprised and disappointed in the suggestion that the government is anything less than honest and forthcoming in this legislation or in the wage protection fund, because quite clearly that is not the case. I hope it was emotion that led you to say that.

I think, however, there is no confusion around the need to protect employees' wages. It becomes more of an item and more of an issue and one that is much more prevalent in a recessionary time when many people are losing their wages.

The government, in introducing this legislation, did not suggest that the protection of employee wages was something that expired after a recession. It is a principle that we very strongly believe in, that employees who are owed money must receive it and employers who are owing to their employees must be accountable and responsible to pay that. The fund is part of that process in the event that we are not able to collect those moneys from an employer. It is a principle that I am very proud of and I am very proud of the fact that it will not disappear. It is certainly not misleading and the government is not being dishonest or not forthcoming in its presentation of the principle behind this bill. It never has been and never will be, and I am distressed to hear a remark like that from Mrs Witmer.

Mrs Witmer: In response, I have no problem with what the government is proposing; however, I do wish some of the points you have made, Mr Huget—and I think they have been well spoken and well said—had been made previous to today by the government, and there had not been the continual stress on the poor victim of the recession, because certainly it is the impression of the public that Bill 70 is intended to deal with those people who are victims.

The Chair: All those in favour of Mrs Witmer's motion, please indicate. Those opposed?

Motion negatived.

Sections 17 and 18 agreed to.

Les articles 17 et 18 sont adoptés.

Section/article 1:

The Chair: Ms Murdock, that takes us to section 1 of the bill, please.

Mr Offer: We still have sections 1, 2, 3 and 4 to complete.

The Chair: That is my understanding.

Mr Offer: That is all that is required?

The Chair: Yes, sir.

Mr Offer: May I ask if I might have a two-minute recess.

The committee recessed at 1534.

1536

Ms S. Murdock: I move we adjourn and commence again tomorrow morning at 10 o'clock.

The Chair: Ms Murdock moves to adjourn. Non-debatable. All in favour? Opposed? Motion carries. We return here at 10 o'clock tomorrow morning.

The committee adjourned at 1539.

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First Session, 35th Parliament

Official Report of Debates (Hansard)

Thursday 22 August 1991

Standing committee on resources development

Employment Standards
Amendment Act (Employee
Wage Protection Program), 1991

Agriculture funding

Assemblée législative de l'Ontario

Première session, 35^e législature

Journal des débats (Hansard)

Le jeudi 22 août 1991

Comité permanent du développement des ressources

Loi de 1991 modifiant la Loi
sur les normes d'emploi
(Programme de protection
des salaires des employés)

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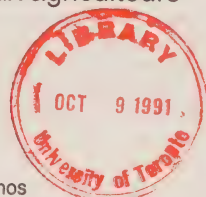


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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday 22 August 1991

The committee met at 1005 in committee room 1.

EMPLOYMENT STANDARDS AMENDMENT ACT (EMPLOYEE WAGE PROTECTION PROGRAM), 1991

LOI DE 1991 MODIFIANT LA LOI SUR LES NORMES D'EMPLOI (PROGRAMME DE PROTECTION DES SALAIRES DES EMPLOYÉS)

Resuming consideration of Bill 70, An Act to amend the Employment Standards Act to provide for an Employee Wage Protection Program and to make certain other amendments.

Reprise de l'étude du projet de loi 70, Loi portant modification de la Loi sur les normes d'emploi par création d'un Programme de protection des salaires des employés et par adoption de certaines autres modifications.

The Chair: We shall resume our consideration of Bill 70. Ms Murdock, we are back once again to that portion of the bill which was stood down by you.

Section/article 1:

Ms S. Murdock: The first subsection is a technical one. It is simply to change the existing clause numbers to what will be, I hope, new clause numbers.

The Chair: Discussion about all of section 1 of the bill.

Ms S. Murdock: All of section 1? Well, subsection 2 is adding a new subsection (4) which is the section that shields the administrator from the requirement of holding a special hearing under the Statutory Powers Procedure Act.

The Chair: And that has obliquely been the subject matter of a considerable amount of discussion over this past week.

Ms S. Murdock: That is right.

Section 1 agreed to.

L'article 1 est adopté.

Section/article 2:

Ms S. Murdock: Section 2 is section 39c and that removes the \$4,000 cap which currently applies to wages which may be recovered on behalf of workers by the employment standards branch. Workers previously would have had to start a civil court action to collect more than \$4,000.

Mr Offer: In section 2, the explanatory note refers to an order that an employer must pay an employee illegally subjected to lie detector testing. There was some discussion around this whole principle, and I am wondering if the parliamentary assistant or staff might be able to explain the type of process that would go around this whole question of lie detector testing and what an order may result from.

Ms S. Murdock: Do you mean now with this change, or do you mean now under the existing Employment Standards Act?

Mr Offer: I could respond to your question by just saying now. I understand that section 2 would remove the \$4,000 limit. But it is also referable to an order the subject matter of which might be lie detector testing, and I am somewhat unfamiliar with the type of order and the type of fact situation that might result in an order being made and the type of dollars that might be so awarded.

Ms S. Murdock: Peter Jenkins would probably know.

Mr Jenkins: In the present section 39c in the existing act, an officer can make an order for reinstatement, for example, or for loss of earnings or other employment benefits or for both. We have not had a lot of claims under the lie detector part in the last decade, I think maybe two or three at the most. It is a very seldom used provision in the act.

Mr Offer: That is why I am asking the question. What happens? Somebody is at work, that person is requested to take a lie detector test, the person refuses, and then what happens from that?

Mr Jenkins: They would file a claim with the branch, and the branch would assign it to an officer.

Mr Offer: Can we go back one? One day, somebody is asked to take a lie detector test. The person refuses. What does the employer do to the person that results in the inquiry having to take place?

Mr Jenkins: It could be a number of things. It could be a dismissal. It could be penalizing them in any way for not taking the lie detector test. It could be a number of sanctions that the employer could take against the employee for refusing to take the lie detector test, and the officer would issue an order where he found there was a violation of the act in regard to the employer's actions to the employee.

Ms S. Murdock: If I might add to that too, under the section just before that, 39b in the ESA, it says under subsection 39b(1) that an employee has the right not to take or be asked or required to take or submit to a lie detector test. So if an employer does any of those, they have recourse under the ESA. Does that answer your question?

Mr Offer: It is very helpful in that this is as a result of some employer asking some employee to take a lie detector test for some reason. Under the Employment Standards Act the employee is not required to ever submit to a lie detector test, the employer does not comply with the provisions, the protections of the Employment Standards Act, which results in the employer taking some punitive action against the employee. That action may be docking that person a couple of days or it might be firing the person, I would imagine, and the employee can then go to the branch to get an order—

Ms S. Murdock: He puts in a complaint and the employment standards officer then investigates the complaint.

Mr Offer: He puts in a complaint, and that complaint is investigated. I would imagine in a number of cases that as the complaint is investigated so it may also be resolved by the employer—I would imagine that is just the nature of these types of complaints. If it is not, an order is made for either reinstatement if the employee has been fired, or for lost wages, notice provisions and things of that nature, if the person will not be reinstated, or if the person does not wish to be reinstated. Will that include that provision?

Mr Jenkins: That is correct, yes, in certain circumstances. The employer may have made the employment relationship so untenable for the employee that reinstatement is just not an appropriate remedy.

Mr Offer: So then the order could in fact, in terms of dollars, talk about the actual wages that the person might have lost, vacation pay, notice. He would have had to be entitled to some notice.

Mr Jenkins: That is right.

Mr Offer: And potentially some severance if he qualifies. So it could be that type of a dollar figure.

Mr Jenkins: That is correct, yes.

Mr Offer: What happens in the absence of this fund when an order is made? How is the order converted into money?

Ms Muir: If an order is made and the employer wishes to dispute it, under section 50 the employer is currently required and will still be required to pay the money that is owed, the amount of the order, into trust. So the issue of whether you are going to pay money from the wage protection program in such circumstances does not arise because the money will be in trust. If the employer loses the appeal, that money would be available outside of the wage protection program to pay the person what is owed.

Mr Offer: So if the employer wishes to dispute the claim, the only way the claim can be so disputed is if the employer pays in the money so claimed, thereby giving the employer the right to dispute the claim—such as what happens in the Income Tax Act, I think.

Mr Jenkins: That is right. The employer can dispute the employee's allegations at the investigatory stage of course, but once the officer has issued the order the employer, in order to appeal that order, would have to pay the money into trust to get a hearing before a referee.

Mr Offer: And if the employer does not put the money in, then the order sits out there.

Mr Jenkins: That is correct.

Mr Offer: How is that order then potentially converted into dollars? How do we move a judgement to money?

Mr Jenkins: There are a number of collection proceedings the branch can avail itself of which are set out in the present act. One is a third-party demand; the other is filing a certificate in court which makes the order enforceable as a judgement of the court. There are a number of areas.

Ms S. Murdock: Before there would have to be access to the fund, but the employee, if that were the case and the employer was not paying, for whatever reason, the employee

would be paid the order and the branch would then proceed against the employer using one of those methods.

Mr Offer: That is in light of the amendments we are talking about now.

Ms S. Murdock: No, we passed those in the previous amendments.

Mr Offer: No, I am talking about—

Ms S. Murdock: In light of what has been going on a week, yes.

Mr Offer: But otherwise, in regard to the enforcement procedure, what type of success was there by the branch in moving orders into satisfaction? Was it the branch that moved the order or was it the employee who had to move to enforce the order?

Ms S. Murdock: It would be the branch that would move the order. It would not be the employee, would it?

Mr Jenkins: The branch would institute collection efforts on the employee's behalf.

Ms S. Murdock: For your information, the employment standards branch actually has instituted a collection process over the years that is actually very good. Not that it is its function, but when the situation arises, it has become quite adept at collection procedures.

Mr Offer: One question on this matter, in light of the new section 50, if there was this fact situation, is it still necessary for the employer to pay the money in?

Ms S. Murdock: Yes. None of the provisions have changed. You now have independent adjudicators and referees who were not there before, but the procedures and the requirement for the employer to pay the money in trust before a hearing has not changed.

Mr Offer: So if there is going to be an appeal, a reference of the order or an appeal of the order by the employer, the only way that can be heard is if the employee pays the dollars in. Can the employee get the money out of the fund prior to the matter being heard?

Ms S. Murdock: No. Now we have passed other amendments that said that if there is an undisputed section that portion can be released, but for the disputed portion for the purposes of which a hearing would be held, no. No moneys will be released during an employer appeal.

Mr Offer: Also, under the bill, just to be very clear because the branch does not have to exhaust all of its remedies against the employer, they do not actually have to take out these orders, do they, before going against the director?

Ms S. Murdock: That is true technically and in principle it is true, but in practice they are going after the employer first. But there are going to be some situations where they have gone down to the belt south of Texas or wherever it is, and you are never going to get the employer. In those instances, it will be a discretionary call that is true, but it is not going to be an automatic thing, that you run after the directors the first chance you get.

1020

Mr Offer: I know this is somewhat speaking about some of the things that were brought clearly to our attention yesterday. What is the principle? Yesterday we spoke

about the principle. What is the underlying principle that says the fund should be accessed not only by a worker who is out wages and does not have a job but as well by a worker who may also be out wages but still retains the job? I am just wondering about the principle that drives that, to allow the worker to do that.

Ms S. Murdock: It is all workers, regardless of whether they are employed or unemployed. I do not think here was any differentiation made. I know there was no differentiation made.

Mr Offer: Okay, that has answered my question. I thank you and staff for not only providing an explanation of this but also almost a course in Employment Standards Act procedure 1 and how to access and enforce an order in 5 minutes. I am not trying to be light about this. I think many of us have spoken very much in favour of the principle of the legislation and had in our mind what the principle was. I think it may be that the direction of the legislation was broadened yesterday. I recognize that it has always been in the legislation, but it became crystallized as the breadth and scope of the legislation.

Section 39c is an example of the expansion that I believe not to be the perception of many people in the general public as to what Bill 70 addresses. I think the general public feels Bill 70 addresses a worker who is out wages, vacation pay, termination and severance as a result of the worker losing the job. There is something right and proper about addressing that need. I think the general public appreciates and understands that principle. But section 39c is not that principle. It is a broader type of principle, and I am not certain how the general public will view that. We are going to have to make up our minds.

Ms S. Murdock: I just want to respond to that one point, though, because under the existing Employment Standards Act section 39c and the amendment we are proposing today, with the exception of the last few lines, are identical. There has been no change except for the \$4,000 allowance.

Mr Offer: Of course, except for the fact, when I talk about the bill as a whole, that now the person in that circumstance can access a fund, whereas prior to this bill he was not able to.

Ms S. Murdock: They could not, true.

Mr Offer: And the fact is they are still potentially employed.

Ms S. Murdock: Yes.

Section 2 agreed to.

L'article 2 est adopté.

Section/article 3:

The Chair: Section 3 of the bill, Ms Murdock, I read being very self-explanatory. Is there any discussion? I did "self-explanatory," not necessarily denying that there is going to be any discussion about it, because there has been whole lot of discussion about it and I expect that some people might want to make comments, like Mrs Witmer.

Ms S. Murdock: This is not a lie detector test. This is everyday work.

Mrs Witmer: This is similar to what was asked before, but why would an employee be dismissed, and is it necessarily dismissal?

Ms S. Murdock: It does not necessarily have to be a dismissal. Mind you, having said that, surprisingly there have not been all that many complaints, but that may change with the new legislation. We do not know yet. It may be a reduction of hours of work, and if the employee believes that because he refused to work on Sunday he was penalized in some way, he can put in a complaint with the employment standards officer. At that point, the same process kicks in. The employment standards officer goes and talks to the employer, the manager or whoever, whatever the situation is, talks to the employees and makes a determination. Again, the appeal mechanism kicks in as well.

I know there has been some discussion under the other bill that is going through on the reverse onus provision, because right now in that section if the employee says he has been fired because he did not work on Sunday, then it is left to the employer to prove that is not the case. There has been some discussion on that. That is the way it stands right now, though, and until that changes that is still the case. It would go through the same process that was discussed for the lie detector provision and the same thing again. If the employer appealed, he would have to put the money into trust; if the employee was not satisfied with the order, the employee could appeal as well.

Mrs Witmer: You have indicated that up until now there has not been much use of this. When you say there has not been much use, how many cases have the number of people who have brought concerns forward increased recently?

Ms S. Murdock: I will let Peter answer.

Mr Jenkins: Under the whole of part XI-B, which includes not only section 39f but other sections regarding Sunday work, we have had approximately 10 to 15 complaints.

Mrs Witmer: Are those recent?

Mr Jenkins: Since the legislation was introduced in 1988.

Mrs Witmer: When that legislation is finalized, is there an opportunity or is there a chance that the number of cases being heard would increase?

Ms S. Murdock: That is a very difficult question to answer, because personally in 1988 I thought the number of cases would have been significant and was quite surprised when I became parliamentary assistant to discover there were so few. So who is to know? I wish I could answer it more substantially than that, but I cannot. I do not believe the ministry officials—if they want to try, that is fine, but I do not think they can either.

Mrs Witmer: Again, this is an expansion of the fund and it can apply to an employee who is employed or also to an employee who has been let go from the job.

Ms S. Murdock: The application is definitely to whether you are employed or unemployed. There has been no distinction made. An employee who has a complaint under the Employment Standards Act has the right, but "expansion"—I do not approve or agree with that word. It

is not an expansion; it is a fund that has been initiated now with this legislation. The rules have not changed; it still applies to all employees in the province.

Mrs Witmer: At the present time, with this wage protection fund not being in place, how would employees be reimbursed if the employer did not provide that compensation?

Ms S. Murdock: Civil action. But I should point out too that section 39f—and I thank legal counsel for reminding me—this particular provision is only for dismissal. Section 39f is only if you are dismissed, although that does not go with whether you are employed or—in this instance you would be unemployed.

Mrs Witmer: Is there anything in Bill 70 at all that would allow an individual to be reimbursed if there was a simple violation, if, as you indicated his hours were reduced, that would allow him access to the fund?

1030

Ms S. Murdock: Just to make clear what your question is, if I said that my hours were reduced and an order was put forth and the employer—I mean, either there would have to be an agreement with the employer as to what the recompense would be, whether it would be payment or more hours or—I do not know how you would do that. Peter, could you respond?

Mr Jenkins: At present the answer would be no, but should the new Sunday work provision pass, there will basically be the right to get money from the fund where your employer is not complying with an order to stop penalizing you for refusing the Sunday work. If the employer, under the new Sunday work legislation, reduced your hours as a result of refusing to work on Sunday and the officer were to issue an order ordering the employer to make up for the loss of earnings and the employer would not comply with the order, the employee would have the right to get the money from the fund, but then we would go after the employer for the money to replenish the fund.

Mrs Witmer: So according to the new legislation then, an employee would be eligible for money from the fund.

Mr Jenkins: That is right.

Mrs Witmer: But that has not been passed yet.

Ms S. Murdock: The Sunday work legislation is in the standing committee on administration of justice going around the province.

Mr Offer: I have no comments. I believe Mrs Witmer has brought forward the points of this particular subsection. Many of the concerns that I have dealing with the breadth of the legislation are much the same as with the earlier section. I would have appreciated receiving from the government a more concise statement of principle as to this. I recognize that they do not have to do that, but I do recognize that the statement of principle as to the need for Bill 70 was very clear that people who are out of a job and out of wages, vacation pay, termination and severance should not and therefore you have this fund that is set up. That is a principle we all recognize.

But I did not hear the statement of principle as to why that bill should be expanded to include these sections. That

will of course not be given, I know that, by the government in the few moments left on this bill. However, it would have been helpful, I must say, to hear why this bill is to be expanded to this degree and, through the use of regulation, to a much greater degree totally out of the control of us as legislators. It would have been, I think, quite helpful.

Mrs Witmer: Getting back to the expanded principle of the bill and the fact that we hear now that changes are going to take place as a result of the new Sunday shopping legislation, etc, I am just wondering what else might await us in the future. Yesterday, I raised some concerns about drug testing. What rules or regulations are there at the present time concerning drug testing in the workplace?

Ms S. Murdock: None. There is nothing under the Employment Standards Act regarding drug testing.

Mrs Witmer: Are there any plans to introduce changes? Since this is an area that is being discussed now I am wondering if eventually this is going to be included within this bill as well.

Ms S. Murdock: To my knowledge at this point in time, and I cannot guarantee that is going to stay—I am not the minister—we are not discussing that. There are other things that are being discussed within the ministry. Drug testing is not one of them, but if it were to be included, it would have to be done legislatively; it could not be done on a regulatory basis. It would have to come in legislative form with an amendment to the legislation.

Mrs Witmer: What else might be included in the future within the application of Bill 70 when there are violations of the Employment Standards Act? Does it enable people to apply to the fund?

The Chair: The parliamentary assistant can answer that if she wants, but I am not sure it is a fair question because she is not the minister, she is not the Premier's office, she is not Ross McClellan. How can she predict what is going to come down the road, short of reading Maclean's magazine?

Ms S. Murdock: Okay, but I will answer. I agree with what the Chair has said, but when the minister spoke in the House on this bill, and in the press releases that subsequently were put out the same day, I mean throughout all—I went through it last night just to double check what we have said, and the focus and the initiator of this legislation is the recession. It is a recession-driven bill, absolutely, but it was not thought up by the previous government in terms of the need for it. It just so happens it is philosophically very important to us that all workers have some protection. That is the predominant theme throughout all of the materials that have been put out. Hansard, when checked that too—same thing in all the debates the members made. It is the whole issue of workers being protected in this province.

I think it came as a surprise, as you may remember, that I did not understand what was not being understood because the existing legislation so clearly included everything that it never seemed to be an issue. Had I known previously that there was going to be these concerns, that they seemed to be so heavy concerns, I would have put forth a statement but I did not expect it because of the

existing legislation. For that, I do not think there is any apology necessary. But other than what is in the legislation now, I cannot think of anything that might be coming up. Actually, drug testing was a good suggestion in terms of things employees are asked to do, but nothing is in the works for this.

Mrs Witmer: I appreciate that response, Mr Chair. We also did some reading last night. This is the type of thing I was looking for but I could not find it, and I appreciate that it was understood by the government but it certainly was not understood by us.

Mr Ramsay: Mr Chairman, I would just like to serve notice that before we adjourn, but after we complete our clause-by-clause proceedings of Bill 70, I would like to be recognized to bring up a point of new business.

Section 3 agreed to.

L'article 3 est adopté.

Section/article 4:

The Chair: Section 4 of the bill is self-explanatory but might none the less attract some debate. Is there any discussion regarding all of section 4 of the bill?

Mr Offer: I am wondering if I might be informed as to how the settlement is to be set aside? What is the process?

Ms S. Murdock: If there was an agreement between the union and the employer for a package that was, say, less than the full statutory entitlement and at that point for whatever reason the event occurred and the employer then did not live up to the settlement, and there was no collusion in getting to the settlement, then it would not be paid. The employee would have access to the fund and would be able to apply to it and the settlement agreement would not come into it. If it was less, the employee would still be eligible for the maximum of \$5000.

040

Mr Offer: My question relates to the investigation to determine whether fraud or coercion has in fact taken place. It is on one hand evident, if not simple to determine, whether an amount that is owed under a collective bargaining agreement under the Employment Standards Act is due and owing and has been paid, and that I think is capable of almost an empirical type of analysis. However, I would like to know when one talks about fraud or coercion if that invites a different type of investigation, a different type of inquiry. Is something that is not mathematical, it is more evidentiary, and I am wondering if you might want to share with us how that type of inquiry can be carried forward.

Ms S. Murdock: This section deals with severance pay. I should also point out that it just deals with that one provision. We got into this discussion in the provisions on the administrator's powers, if you recall, and the situation could be that the employment standards officer would sue an order based on whatever the actual figures say. But if that employment standards officer had some sense or suspicion, in looking through the books or whatever, or just did not feel comfortable with it, at that point it would be brought to the attention of the administrator and the administrator then would or would not proceed on the basis of whatever information would be there. I would

have to ask Peter what kinds of information the employment standards officer would be looking at, because I have never done an investigation on that.

Mr Jenkins: The employment standards officers, I should say, do not always limit their investigations at present to, as they say, an empirical type of analysis. Employment standards officers at present have to evaluate matters other than just purely empirical ones, so they do have some experience in these types of issues. The types of evidence they would look at in determining whether there was fraud or not would be whether the employer provided some false financial statements during the negotiations, or provided some false or misleading statements as to the financial picture during the negotiations. Hopefully, in most cases, there will be some hard evidence they could evaluate.

Mr Offer: Are all the parties given the opportunity to present their case?

Mr Jenkins: The investigation of the officer would be conducted in accordance with the principles of natural justice. Should he make an order and one of the parties is dissatisfied with it, there will be an appeal, in which case there will be a full, formal hearing. But at the investigatory stage, notwithstanding the absence of a full formal hearing, there is still a hearing of the issues in the sense that the officer gives both parties the opportunity to present their cases to him and gives them an opportunity to rebut the evidence of the other side.

Mr Offer: This type of inquiry could eventually get into the court system, could it not?

Mr Jenkins: Yes, on a judicial review it could.

Section 4 agreed to.

L'article 4 est adopté.

The Chair: Bill 70 is entitled An Act to amend the Employment Standards Act to provide for an Employee Wage Protection Program and to make certain other amendments. Shall the title carry?

Title agreed to.

Le titre est adopté.

Bill, as amended, ordered to be reported.

Le projet de loi, modifié, devra faire l'objet d'un rapport.

Ms S. Murdock: For some reason I think trumpets should be blown, but in any case I just want to thank—

Mr Ramsay: Have you got a trumpet?

Ms S. Murdock: I do not know. I cannot play one.

I just want to thank the committee for being so helpful, the Chair and all the members for the discussion and the debate. But I especially want to thank my ministry staff, especially Cherith Muir and Pauline Ryan. They have been in from the beginning, many night hours spent. Also legal counsel, although I have gone through three of them in terms of pregnancy leaves and everything else, and my staff, Alan Ernst. Everyone has been very helpful and I thank everyone for the co-operation.

The Chair: Thank you. We have other matters to deal with briefly, but I should mention the assistance of Ms Manikel, the clerk of the committee, Mr Nigro, the counsel, and of course Hansard and Adrian Jeffrey who has so capably

handled the controls and made sure that all of the profundity expressed over the last several days is documented for your children, grandchildren and great-grandchildren to read with interest.

Mr Ramsay: We have not seen the transcripts yet.

The Chair: I also thank the committee for its patience and tolerance of me in doing my humble best at keeping things rolling, and I thank you very much for your co-operation.

1050

AGRICULTURE FUNDING

Mr Ramsay: Mr Chairman, I would like to move a motion before the committee.

The Chair: Mr Ramsay moves that in consideration of the state of emergency and the income crunch in Ontario agriculture, especially in the oil and grainseed sector, caused in part by the 35% drop in cash-crop commodity prices, the Liberal members of the standing committee on resources development request an emergency debate and hearings by the said committee at the earliest opportunity under section 123 of the standing orders.

Mr Ramsay: The Chair will notice also we take this situation in Ontario agriculture in the gravest sense, and not only is John Cleary, our critic, here but also Murray Elston, our new interim leader, has joined the committee for subsequent discussion that might pursue from this motion.

The Chair: May I, before giving Mr Cleary the floor, indicate that obviously a section 123 application is as of right. The issue in the motion would be the matter of earliest opportunity and emergency debate and hearings. I trust you will be addressing that and expanding on that in terms of what your motion would entail, in your mind at least.

Mr Ramsay: Mr Chair, as a result of this grave situation, in fact crisis situation, that the different commodity councils across the province have stated, it is excellent that we have one of the parliamentary assistants here in Mr Klopp at the Ministry of Agriculture and Food. I know he is obviously very concerned, coming from Huron county, with the situation, that we request the House leaders to find at the earliest possible date a time slot for us to pursue this debate.

We feel it should be done as soon as possible. I know the parliamentary assistant and others here who have rural constituents are cognizant of the incredible situation, specifically a cash shortage that is hurting and is going to, I think, bring to an end some of the farm operations in Ontario. It is an emergency and it is a crisis. We would request that the committee request the House leaders to slot the earliest possible venue, even if it is before the return of the Legislature. We would like to see it happen as soon as possible.

Mr Elston: I appreciate the invitation to speak. I want to underscore the necessity, and of course I will be working along with our House leader to get an agreement from the House leaders of the government and the third party to get this matter before us right away.

It is of concern to us, because although the oil and other grainseed producers are noted primarily, it is also a very difficult time for producers of livestock in the farming

communities, because oftentimes you will see them also into producing grains. Everybody is having difficulty dealing with the lack of cash support at the moment to get them through the 1991 year.

We have had some other climactic problems. The member for Huron has had his own brush with hail and wind damage in McKillop township and other places. I have areas where there have been a lack of rain. In Essex Kent and Lambton there are areas where it is described as a drought situation. I know that the Minister of Agriculture and Food has been invited to address a meeting of some three or four federations of agriculture tonight down in the Essex area of the province to familiarize himself with the very bad situation that has attached to folks in those local areas.

The reason I have come here today, it seems to me and the members of my caucus, is that we wish to alert the members of the committee that although they have finished with Bill 70, we would like them to carry on with just a few more days of activity in the committee before we get back in September, because of the very serious nature of bridging the year's cash flow problems for our farm communities.

There is also another interesting piece of information, and I would hope the committee would be happy enough to vote unanimously in support of my efforts to get both the third party House leader and the government House leader to provide us with a time for sitting. The federal agricultural committee has agreed on an emergency basis to listen to the farm commodity groups on August 29 in Ottawa, to talk about the very same problem from a national perspective.

My point is that if all the members of the committee voted by way of resolution as a reply to the motion by my colleague to have this done before we get back on September 23, then the House leaders would have much more obligation to come up with a satisfactory date to have the farm people come in front of this committee as a legislative forum to discuss in detail some of the problems and to pursue some of the options which might be available.

My colleague the member for Timiskaming with my colleague the member for Cornwall were both recently in Wellington county and came up with what I thought were some pretty interesting options which are not costly in the full scheme of things, but which I think should be considered and probably supported from a legislative backbench point of view and then moved on to the Agriculture and Food minister so he can go to the new Chairman of Management Board and suggest that perhaps with just minor changes it could assist in funding agriculture in the province.

That is why we are here. We understand the motion is as of right to have it discussed at some point, but we believe that the emergency is so critical that we hope we can get everybody's support for bringing the farm communities here to Queen's Park and having an emergency deliberation to see if we can get some more positive options from those people. I appreciate having the opportunity of chatting with the committee about our concerns.

Mr McLean: I am pleased to support this resolution here this morning. The first of last week I had the opportunity to travel in southwestern Ontario, and when you look at some of the drought situations around Tilbury and in

and around those areas where the corn is like three feet high, it certainly gives the impression there are some real problems there.

In Chatham last weekend and Monday, the Ontario Soil and Crop Improvement Association was meeting and on their agenda was this very issue. There is a crisis out there. We had a very important member of the National Farmers Union and co-operative development association make a presentation to us in Windsor with regard to the farm problems that are taking place. There is a great concern out there with regard to the cash flow that farmers are having a problem getting.

I would hope that the House leaders would agree to an emergency debate and have the farm community come in and make some presentations, and it would also give the Minister of Agriculture and Food the opportunity to come before the committee and indicate his concern with regard to the farm community. I do think it is important, and I will certainly urge my House leader to agree to a meeting. It may take a week or 10 days, but at the earliest opportunity I think it would be important to have it.

Mr Cleary: Just to add to what the previous speakers have said in their support, I too have travelled in a lot of areas in the province and met with agricultural people. With the falling prices and 35% reduction in some prices, unless we get our act together in the province of Ontario, many of these farmers will not be in operation next year.

There is also another very serious issue that has not been touched on earlier: dead livestock removal. I know some of the companies have closed, and the farmers are working together to try to come up with some type of recommendation to bring to the province, and I think this is a very serious issue too. I do hope that the House leaders will be able to get together and at least bring some of these agricultural people in and listen to them because it is probably one of the most serious years they have had in many.

The Chair: Thank you. It has been indicated to me that other members of the committee want to participate in the discussion and debate surrounding this motion, but it has also been indicated to me that there is a request for a brief recess of 10 minutes. I suggest to the committee that is not inappropriate. We will have a brief recess for 10 minutes.

The committee recessed at 1058.

1118

The Chair: We are resuming with Mr Klopp.

Mr Klopp: I too have been worried for some time and so has the Minister of Agriculture and Food, with regard to this business of agriculture and how it has been done over the years—the state of emergency, as many farmers have told me over the last number of months. What do you mean the state of emergency? It has been a problem for 10 years. I wonder what now all of a sudden the excitement is about. But I guess it is never too late. The minister is also very much concerned. He has been dealing with this, as some of you know, the gross revenue insurance plan, GRIP, and net income stabilization account, NISA things have been dragged through, but we are actually looking at the ministry to make sure we can get those payments out as soon as possible.

With regard to the drop in commodity prices, that is very true in all commodities. Hog prices are down, and yet we have the lowest number of hogs. So for this to be brought forth by the Liberal members is good. I can assure you that from this side, speaking on behalf of myself and as parliamentary assistant to the minister, it is a concern that has been brought up to our caucus on a number of occasions, and I would like to recognize that the critic for the Tory party has also been in contact a number of times and I appreciate that. I can see that this motion is fairly well put forward.

Mr Waters: I understand there is a procedure for a section 123 which you are asking for here. It is also my understanding that it is not normal for us to be voting on anything in committee of the whole, that it is automatically referred to the subcommittee to deal with. Because of the way you have worded it, and after talking with the PA and knowing in my area about the agricultural needs, what I would like to suggest is that the subcommittee convene immediately upon the ending of this meeting to discuss this and get this process moving along the way.

Mr Elston: I thank Mr Waters for the suggestion. The reason I would ask for the committee's endorsement of this is that you have all of the people here and we are all in support of it. A motion from the entire committee to get on with it would obviously take away the necessity of the subcommittee meeting. Everybody is here. We have some time, and if we are all in agreement, then I think we should be prepared to approach each of our House leaders to get the day for these people to come in and speak to us. From my point of view, that is the only reason for bringing it here, so we can have all of the committee just say, "We want to do it." I hear it from Mr Klopp and now from you as well, Mr Waters, that you are in favour. If we are all in favour of doing it, you do not really need the subcommittee.

The Chair: I appreciate your comments, but I should indicate that standing order 123(b) would appear to require the subcommittee to report back to the committee, not just with the reference under standing order 123 but with a number of other matters, including proposed time frames and proposed witnesses, and that is the function of the subcommittee. The requirement is that the subcommittee shall make a report to the committee. I agree that the subcommittee is not a necessary prerequisite to standing order 123 or to this motion, but it is a necessary prerequisite to the development of the process after the 123 as-of-right notice.

Mr Ramsay: I would request that, because of the emergency nature of this, we could go into subcommittee hearings right now and have a discussion, with the understanding that we would immediately go back to committee once the subcommittee has had this discussion so that we can conclude this matter today and we can get a request from this committee, after subcommittee consideration, to the House leaders and get this on as quickly as possible.

The Chair: Mr McLean will have the floor in just a minute. Let's first deal with the matter of the motion which is before the committee. Is there any comment on dealing with the motion? Mr Waters has already indicated that the

subcommittee may be or is prepared to meet immediately after this committee. In terms of reconvening, I appreciate what you are saying and I would like to hear comments from people, because the subcommittee would have to have something to report back, and in a period of 30 seconds or two minutes it is not going to have anything to report back. Mr Elston has already made it quite clear that there is going to be a need to consult with House leaders and for them to exchange views. I am concerned about what you say in view of the fact that subcommittee will meet. Mr Waters has already indicated the government is prepared to do that, but to come back to the committee this morning I am not sure would be particularly fruitful.

Mr Offer: Just a friendly suggestion. It could very well be that the motion could be passed. We then could send that off to the House leaders to discuss it. At the same time, the subcommittee could be meeting to determine, in the event of agreement by the House leaders, who is it that we would invite and then report back to the committee and have that passed. That could all be done and wrapped up very rapidly, I believe.

Mr Waters: The problem that I would see with that is getting a list together of people to do presentations before us and getting the time. There is no way we are going to get that from all three House leaders, because I do not even know where our House leader is today. I know he is not in his office, because I just left there. I do not mind convening a meeting right after, but I cannot see how we can report back to committee as to where we are going on this today.

The Chair: In any event, can we deal with the motion, which is more properly to be dealt with now than the matter of when a subcommittee meets and when it reports back, which can be dealt with after the motion?

Mr McLean: The committee can do what it likes, with unanimous consent, with regard to whether you have to have a subcommittee or not. I think the important thing is that this motion is passed now and then referred to the House leaders for their consideration. It may be that the House leaders will not agree to proceed, and if that happens, then there is no point in going into a lot of detail as to whom you are going to have before the committee and whom you want to have before the committee. I would think the simplest thing to do would be to have the motion put and then referred to the House leaders.

Mr Waters: If you are asking for a vote in support of standing order 123, I can understand that, but there is no need to have a vote, because I just did one on the Workers' Compensation Board. Once Mr Ramsay or Mr Cleary presents this to the Chair, the process automatically starts and it goes to the subcommittee. You are entitled to one standing order 123 in a year and the process is already there. I do not think there is anybody around here who is not supportive of this, and if you want to vote on support, fine, but the process is already there.

Ms S. Murdock: I am just not understanding this. I am reading that what this motion is doing is requesting an emergency debate and hearings by this committee at the earliest opportunity under section 123 of the standing orders. I just need to be clear on this. That means that if we

took a vote on this and it was passed, then section 123, the 12 hours, starts and the subcommittee sets the time. Is that what happens?

Mr Ramsay: I beg the patience of the other members on the committee. I understand in normal circumstances how section 123 works in that it is an automatic right. Mr Waters is correct, you do not have to vote on this to get approval, because it is our right as a caucus to have one of these during the year. I understand that.

Why I am bringing this to the committee today is because this is an emergency situation. What I would like to persuade the other members of the committee to do is to pass this motion, though normally it is not necessary, so that we could expedite a request to the House leaders, who may or may not agree that we do this. We would like our committee to request that the House leaders consider this as quickly as possible so that we could get on with this as quickly as possible, if we can get on with it at all.

We will some time, I guess, because it is our right, but we are asking to try to expedite the process somewhat, because as Mr McLean says, the committee, with unanimous consent, can do whatever it wishes. The point we want to make is that it is imperative that we get on with this as soon as possible, so we are asking for something maybe a little unusual, that we all support this so that we can get the House leaders informed that it is our desire to have some sort of hearings on the agricultural commodity situation in Ontario.

Mr Waters: If that is what you want, I still have a concern, but what I would suggest is that we convene a subcommittee meeting right after here, get the Chair to go to the three House leaders and try to get some consent from them and some time. But I cannot see us reporting back today, because there is no way in two or three hours that I am going to be able to come up with a list. You might already have your list put together, but there is no way in two or three hours that I am going to come up with a list. I would like to expedite this and get it moving.

The Chair: I will indicate again that it is my view as Chair that this committee, once it decides how to resolve this motion, can give its subcommittee whatever direction it wishes by way of motion, once this motion is resolved. Right now this motion is here. Mrs Witmer wanted an opportunity to participate.

Mrs Witmer: We are speaking to the motion.

The Chair: I hope so.

1130

Mrs Witmer: I would just like to remind the government that in its Agenda for People, it did promise to the agricultural community \$100 million in aid. They have also promised to consult with those individuals, and I think we have before us today a letter which we have received from the agricultural community indicating concerns about the operations, about some of the hardships that they are experiencing. They are looking for the government to take some quick action.

Unfortunately, to date this year, the government has only committed about \$50 million for interest rate relief and participation in the GRIP, and we are hearing today

about farmers who have had disastrous prices for their crops. They are experiencing severe financial hardship. They have indicated that they do need much more, and at the very least they were looking for Ontario participation in the national NISA plan for this year. They are very disappointed that this did not happen.

Certainly, given the current situation, which I do support and believe is an emergency, it is imperative that this committee support the motion that has been put forward and that we hear from the agricultural community as quickly as possible, not in October or November but right away. I believe that we could very quickly put together a list of individuals to appear before us and hear their views on what this government can do to help them over the current crisis situation.

Mr Offer: I think we all realize the workings of rule 123, that it is a rule as of right. The reason for this motion and the necessity for its immediate passage is that this committee has been allocated a certain amount of time to sit from now until September 23. This is in fact the last day, and so what we must do is pass this motion so that we are not only asking for a rule 123 inquiry, which is our right, but also allowing the House leaders to discuss giving us the time to sit from today at some point until September 23.

We are saying that this matter is of such a critical and emerging nature, that it is a matter of such an emergency, that not only do we want the 123, but we also request that the House leaders consent to this committee discussing this matter prior to the House reconvening. That is the critical nature of this issue and that is the reason why the motion, as posed, must be put and in fact passed. Without that, we will not have the opportunity to discuss the issue prior to the House reconvening, so we on this side ask that the members of the government vote in favour of this motion. We can then call a subcommittee meeting, but it is absolutely necessary that the House leaders be given the opportunity to give us the time. If you vote against this motion, you will not allow the House leaders to give us the time.

The Chair: Prior to recognizing Mr Elston, then Mr Wiseman and then Mr Waters, I might indicate that it has been ordered by the House, on motion by Miss Martel, that, "With the agreement of the House leaders and the whips of each party, committees may meet during the summer adjournment at times other than those specified in the schedule tabled today with the Clerk of the assembly to consider matters referred to them by the House or to consider matters designated pursuant to standing order 123." I am advised that that order requires as a prerequisite the agreement of House leaders and whips before this committee may meet beyond the hours and days that it had already been directed to meet.

Mr Waters: Could I put a motion on the floor to that that might help everyone?

The Chair: Not right now, unless it is an amendment to the motion that is here.

Mr Elston: Mr Chair, first of all, thank you for clarifying the position. It looks like the 123 can be brought in any event under the auspices of that motion of the House. The House has seen fit to provide the flexibilities to the

committees to request such, and I think the only thing I am asking for is a unanimous vote so that the House leaders understand fully that each of the parties is in favour of doing it.

The other point that I wish to raise—actually, it is more of a point of order in a sense—we have referred to the letter which I brought in, a copy of a letter that was given to me from the Ontario Federation of Agriculture, the Ontario Soybean Growers' Marketing Board, the Ontario Corn Producers' Association and the Ontario Wheat Producers' Marketing Board. It was sent to Mr Rae and to get it on the record as part of the material for our consideration, I am going to have to read it. I ask for your indulgence for doing that, unless you can somehow take it as read.

The Chair: Far be it from me to ask you not to read something. Do you want it to be deemed to have been read? Everybody has it and filed it. Do you want to read it?

Mr Elston: I have given it to everybody, but there is no role to make it an exhibit, since we are not talking about any official piece of business. I think it should be on the record, just to give us the backdrop. If there is any other way of doing it I would be prepared to let it stand on its own.

Mr Klopp: We all have it in front of us.

Mr Elston: But Hansard ought to have it as well.

It is dated August 21, 1991, and addressed to the Honourable Bob Rae, Premier of Ontario, with the rest of the address.

"Dear Mr Rae:

"Ontario agriculture, particularly for the many thousands of farmers whose livelihood depends on the production of corn, soybeans, wheat and other grain and oilseed crops, currently faces about the bleakest conditions which it has ever known. Crop prices have plunged in recent months from levels that were already at an historic low in real worth to values which are now 20% to 30% lower. And in substantial areas of southern Ontario, a 1991 summer drought of near-unprecedented severity has intensified the misery.

"Although the myth persists in downtown Toronto offices that financial disaster exists for only a small number of farmers, the reality is far different. Debt loads continue to mount for thousands of producers; the search for off-farm employment, rendered more difficult in a recession-afflicted economy, grows; retirement reserves and other forms of life savings are cashed in a desperate attempt to pay crop bills and secure family needs; municipal taxes go unpaid; participation in debt review hearings grows; and bit by bit, family farms, sometimes those which have been in the family for more than a century, are sold off to speculators or to those seeking country estates as a means of staving off formal bankruptcy.

"How do you think government would react if it was the income of civil servants, union workers, doctors or teachers which had been eroded by as much as 50% or more in recent years? Would this simply be dismissed as a problem of the few?

"And lest you be advised that the farm problem is simply a case of Ontario farming inefficiency, we remind you of the international trade war which is the cause of present

depressed prices, and of ample information showing that (1) Ontario farm efficiency, especially in the grain and oilseed sector, is about as high as anywhere in the world; and (2) Ontario grain and oilseed subsidy levels are substantially lower than in most other developed countries of the world—indeed, lower than in other major grain-producing provinces of Canada as well.

"New safety net programs will be in place to provide for reasonable income support for grain and oilseed farmers beginning next year. As farmers, we appreciate the financial contribution which the government of Ontario will be making to these new programs in future years. However, the prospect of future support is of little comfort to thousands of Ontario farmers facing immediate financial disaster and no means of paying the bills in the days ahead. Why has the government of Ontario chosen to ignore the need to support grain agriculture during this critical time of transition? For, with all due respect, we submit that your government has introduced not one new measure to assist grain and oilseed farmers ravaged by unprecedented low crop prices in the present calendar year.

"The Ontario farm income stabilization program, which is a legacy from previous governments, provides for price/income support at levels which have long been recognized as being far too low to be adequate. This is why the new safety net programs are being introduced for next year. Even at present absurdly low corn prices, for example, it is far from certain that the Ontario program will provide for any cash assistance at all. And even if it does, the Ontario government will subtract one third of the calculated quantity before making payments to farmers.

"The interest rebate program announced in early 1991 is largely a continuation of the program operated by the previous government and fails in large part to address the grain and oilseed problem because (1) it compensates only for previous year debt; (2) it provides compensation only for those who have been able to secure substantial credit: thousands of farmers are now operating with essentially no access to bank credit; (3) it provides no help to those forced to sell off farm assets or cash in life savings, generally retirement provisions, to keep the farm going; and (4) it does not address critical income/cash-flow needs in 1991.

"We note also with disappointment the fact that your government deliberately chose not to contribute to the new NISA, net income stabilization account, program for grain and oilseed farmers for the current year, thereby denying farmers access not only to about \$16 million in badly needed provincial assistance, but also to an additional \$8 million in federal funds.

"This decision is particularly frustrating because it occurred at the same time as the federal government gave you a rebate on 1991 Ontario governmental contributions towards another program, the gross revenue insurance program, scheduled to provide additional income support next year. In essence, you chose to pocket the money from the government of Canada rather than to use it to help Ontario farmers in desperate need.

1140

"Mr Rae, it is critical that you and your government re-evaluate quickly your policies with respect to family

farm agriculture in Ontario. We see, for example, your efforts to increase operating costs and reduce competitiveness: higher labour costs; the prospect of greater costs and restrictions relative to environmental considerations; emphasis on, and reallocation of resources to, higher-cost organic agriculture; discouragement of larger, competitive farm sizes, and the prospect of greater restrictions on the sale and use of agricultural land. Yet we see no comparable commitment towards supporting farm income. In fact your actions of late demonstrate the opposite.

"It is critical for your government to decide whether it really wants to maintain a viable family farm agriculture in this province, for indeed almost all Ontario farms are family owned and operated. No self-esteeming corporation would tolerate the low profits and high risks which characterize 1991 agriculture. It is critical for you and the government of Ontario to decide whether it is important to support farm-based rural communities and whether Ontario citizens should eat Ontario-grown food.

"And the place to start in these deliberations involves 1991 support for Ontario grain and oilseed producers. If you continue to ignore their plight there will be many hundreds, if not thousands, fewer of them to be concerned about in a few months' time.

"Two decisions which should be made immediately are: (1) the reversal of your earlier decision not to contribute to NISA in the first, ie, current year; and (2) a waiver of the one-third deduction under the Ontario stabilization payments for the 1990-91 crop year.

"We would also encourage you to follow through on the commitment which you made soon after your September 1990 election to meet early with various farm groups. This would enable you to learn first hand of the economic carnage which is occurring at this moment in rural agricultural Ontario."

It is signed by Roger George, president, Ontario Federation of Agriculture, Frank Anthony, president, Ontario Corn Producers' Association, Larry Miehl, chairman, Ontario Soybean Growers' Marketing Board and George Dmetriuc, chairman, Ontario Wheat Producers' Marketing Board.

This sets out the full nature of the current concerns of these people. To that, of course, we have added in other discussions the concern of our livestock producers who are equally being faced with low prices, and also the conditions of inclement weather in some parts of the province which prevent them from producing the feedstocks necessary to reasonably carry on their business. This is why it is so critical we do it early. I appreciate the support from both Mr Klopp and Mr Waters in support of the desire to have this thing heard.

I have taken a positive message from the deliberations to this point in any event and I will be writing—I think I can get at least one House leader to see my point of view. I suspect Mr McLean has his House leader on side and I would only ask that when we find Mr Cooke—and Mr Waters, I presume, is going to be in hot pursuit of Mr Cooke, his House leader, whose assistant was here at one point—perhaps we can get an early delivery of a date and names for people to come and talk to us about agriculture in crisis in Ontario. Thank you.

The Chair: Mr Wiseman first.

Mr Wiseman: I am going to waive, thanks.

The Chair: Okay. This is an invitation to members of the committee to express their concern about the wording of this in that, although titled a motion and moved as a motion, it does not express any distinctive resolution on the part of the committee. Mr Waters.

Mr Waters: As stated before, there is no need for a motion. Once you present a 123 it is in. But further to that presentation, because we are all agreed of the urgency of the matter, I would like to make a motion that the Chair immediately approach the House leaders and whips of all parties to request additional time prior to September 23 to accommodate the Liberal request for a section 123 dated August 22, 1991. Does that resolve this?

Mr Elston: That is fine.

The Chair: Mr Ramsay, having moved a motion, what is your position now with respect to a motion you moved? Do you incorporate the comments of Mr Waters into your motion by way of the resolution the committee is to vote upon, your earlier motion being tantamount to a preamble to that resolution?

Mr Ramsay: I would accept, Mr Chairman, that my motion be downgraded to a request, as that is all that is required under section 123, and I would certainly support the motion by Mr Waters now before the committee.

The Chair: You are withdrawing your motion?

Mr Ramsay: Yes.

The Chair: Treating it as mere notice.

Mr Ramsay: Not as a motion, but as a notice, yes.

The Chair: There is a motion on the floor. There being no indication that anybody wants to discuss this further, all those in favour please indicate. Opposed?

Motion agreed to.

Ms S. Murdock: Unanimously.

Mr Ramsay: Thank you, yes, that should be noted. Mr Chair, is it necessary to have a subcommittee meeting now, or can we do that at a later date?

The Chair: In view of the motion that has been passed, with the direction that is inherent in it, and in view of the fact that House leaders' consent and whips' consent is a prerequisite to this committee doing anything with this before the House sits, perhaps it is premature to have a subcommittee meeting, subject to what people might say.

Mr Waters: On that topic, though, I know Mr Ramsay and myself—is it you, Mr McLean, who is on the subcommittee? It used to be Mr Arnott, but are you going to take over?

Mr McLean: No, Mr Arnott will be at it when it is called.

Mr Waters: Okay. I think over the next few days we should keep Mr Chair or our House leaders' offices informed as to where we are so we can convene a subcommittee meeting at the earliest possible time.

Mr McLean: Yes.

The Chair: Thank you, people.

The committee adjourned at 1147.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair: Kormos, Peter (Welland-Thorold NDP)
Vice-Chair: Waters, Daniel (Muskoka-Georgian Bay NDP)
Arnott, Ted (Wellington PC)
Cleary, John C. (Cornwall L)
Dadamo, George (Windsor-Sandwich NDP)
Huget, Bob (Sarnia NDP)
Jordan, Leo (Lanark-Renfrew PC)
Klopp, Paul (Huron NDP)
Murdock, Sharon (Sudbury NDP)
Offer, Steven (Mississauga North L)
Ramsay, David (Timiskaming L)
Wood, Len (Cochrane North NDP)

Substitutions:

Cooper, Mike (Kitchener-Wilmot NDP) for Mr Dadamo
McLean, Allan K. (Simcoe East PC) for Mr Arnott
Wiseman, Jim (Durham West NDP) for Mr Wood
Witmer, Elizabeth (Waterloo North PC) for Mr Jordan

Also taking part: Elston, Murray J. (Bruce L)

Clerk pro tem: Manikel, Tannis

Staff: Nigro, Albert, Legislative Counsel



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of Ontario**

First Session, 35th Parliament

**Official Report
of Debates
(Hansard)**

Monday 23 September 1991

**Standing committee on
resources development**

Sub-committee report
Agriculture funding

**Assemblée législative
de l'Ontario**

Première session, 35^e législature

**Journal
des débats
(Hansard)**

Le lundi 23 septembre 1991

**Comité permanent du
développement des ressources**

Rapport du sous-comité
Subventions aux agriculteurs



Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 23 September 1991

The committee met at 1600 in committee room 1.

SUBCOMMITTEE REPORT

The Chair: Good afternoon. The first matter is the report of the subcommittee. I put this on record:

"The subcommittee met on Monday 16 September 1991 to discuss the standing order 123 designation on the crisis in the agricultural sector. The subcommittee agreed to the following:

"The minister will be requested to appear for half an hour at the start and at the end of the public presentations. Ministry staff will be requested to appear for half an hour at the end of the public presentations.

"The Agricultural Commodity Council will be requested to make a one-hour presentation.

"The following groups will be requested to make 30-minute presentations: Ontario Federation of Agriculture; Ontario Food and Vegetable Growers Association; Christian Farmers Federation of Ontario; National Farmers Union; Catholic Rural Life Association; supply managed boards—group presentation; Ontario agriculture committee—Canadian Bankers Association; Ontario Grain and Feed Dealers Association; Ontario Corn Producers; Ontario Soybean Growers' Marketing Board; Ontario Wheat Producers' Marketing Board; Ontario Cattlemen's Association.

"Three additional groups may be requested to appear: Essex-Kent Federation of Agriculture, Mennonite Central Committee, and a group to be designated by the Liberal members of the committee. The subcommittee may change these last three groups as the hearings progress.

"The remaining time will be allocated for report writing.

"In accordance with standing order 123, this report of the subcommittee is deemed to be adopted."

AGRICULTURE FUNDING

Consideration of the designated matter, pursuant to standing order 123, related to the state of emergency and the income crunch in Ontario agriculture.

The Chair: Welcome, people, this afternoon. We will be hearing first, as indicated, from Elmer Buchanan, Minister of Agriculture and Food. I will let people know that there is coffee and tea. I do not think there is a fine representation of Niagara fruit juices. It would have been appropriate for them to have been on the table in view of what we are speaking of, but it remains that there are some fruit juices there as well. We will try to do better in the future.

MINISTRY OF AGRICULTURE AND FOOD

Hon Mr Buchanan: Good afternoon. We are meeting today to discuss a situation of great importance to our province: the plight of our agricultural and rural communities. As most of you know, farmers are facing very tough times right now. I welcome the presentations that will be heard by this committee. We hope this discussion will help us to

bring forward creative solutions to the urgent problem facing our farmers.

Small and sometimes negative returns are making it difficult for farmers to make ends meet. Drought conditions in some areas are compounding these problems. As important, rural communities are not receiving their fair share of the services or wealth of the province. In the next few minutes, I would like to briefly outline how we arrived at the current grave state of affairs and what measures have been and can be taken to relieve the burdens of our farmers and rural residents.

First, how we got into the situation. One of the main culprits driving down commodity prices is the trade war going on between the United States and Europe. Uncontrolled export subsidies and non-tariff trade barriers are driving prices to near-record lows, particularly in the grain and oilseed industries. In some parts of the province, drought conditions are adding substantially to the burden. Now the Chicago Board of Trade is attempting to throw yet another curve our way by allowing specified, US-only grain shipments to count as their deliveries, and this despite our supposed secure access through the federal government's free trade agreement.

The Ontario government too is wrestling with the economic pinch, trying to set priorities, maintain the deficit at a reasonable level and still provide the programs and services the people of Ontario need the most. Still, the concerns and long-term viability of farmers and rural communities have continued to take a high priority for this government.

Recently we had a cabinet and caucus meeting at Honey Harbour. In the discussions we had, it was clear that agriculture and food plays, and must continue to play, a key role in the economic renewal of this province.

From the very beginning of my mandate, I have focused on three main areas: working towards long-term financial stability in agriculture, rebuilding our rural communities and encouraging environmental sustainability. From the beginning too my approach has been one of responsiveness and co-operation. That is why I have travelled so extensively, talking face-to-face with farmers, farm leaders and food processors to find out what it is really like out there. To me, it is essential to develop initiatives in close co-operation with those affected the most.

Our farm interest assistance program is a case in point. After visiting and talking to hundreds of farmers throughout the province, the Agricultural Finance Review Committee issued a report this spring saying there was an urgent need for relief from high interest rates.

Within about two weeks, I introduced a one-year, \$50-million program meant to help those most in need. We have already distributed more than \$36 million to more than 7,700 farmers, at an average of about \$4,700 per farm, and

we are committed to distributing every cent of the balance of that fund.

Last week, I announced that an estimated \$93 million in interim payments under the gross revenue insurance program will be put into the hands of enrolled farmers beginning in mid-November. Also on the financial front, \$8 million has been paid out of the \$30-million grain stabilization program, and crop insurance claims will reach about \$60 million this fall and winter.

I have also met with several bankers and the bankers' association, which will speak to this committee later. Committee members may wish to ask questions of them directly. From our discussions, I have understood that our financial institutions are well aware of the current situation in the farming community and that the programs I have mentioned will help ensure cash flow for farmers.

On the international front, this government fully supports the national position on agriculture at the General Agreement on Tariffs and Trade. We cannot accept the dismantling of article XI, which provides the international base for our supply-managed industries.

Along the same lines, we cannot allow other countries to ruin our grain and oilseed sectors, our red meat sector or our horticultural industries through uncontrolled export subsidies and non-tariff barriers. The achievement of our goals at GATT will allow us to provide better opportunities for fair pricing here in Ontario.

In spite of tight economic times, I think we have done much to support the agricultural community. We have not reneged on promises, and, in fact, with the interest assistance program, we delivered larger payments to those most in need several months earlier than any similar programs by former governments.

Unfortunately it seems the federal government is not interested in helping farmers throughout the country beyond its current programs. In addition, Ottawa is not meeting its previous commitment to pay for these so-called third-line programs. We are continuing to pressure our federal counterparts to treat all Canadian farmers fairly. Ontario must receive its fair share of any national efforts to assist our farmers.

In past programs such as the special Canadian grains program and last year's federal assistance package, Ontario's share declined. This is in spite of the fact that Ontario remains Canada's third-largest grain producer. I have taken my concerns to Mr McKnight directly. The Premier will be writing to the Prime Minister on this very same issue. This government is trying to do the best it can with what resources we have.

While we are working on immediate cash-flow problems, we have to look at securing our future in agriculture. That means looking at long-term plans to obtain fair product pricing for our farmers, and it means paying attention to the rural communities that surround and support our agricultural industry. For all of these, we need the ideas of the farming community to provide guidelines and formulas for success. We need input so that true stability in Ontario agriculture and in our rural communities can be achieved.

We must continue to leave our doors and minds open to innovative ideas, either for addressing immediate problems

or for longer-term structural changes. The Ontario government is committed to working with the people of rural Ontario to build stronger, more stable agricultural and rural communities. It is a matter of fairness and justice.

The Chair: We have approximately six minutes per caucus for questions and comments.

Mr Mancini: I have a point of order, Mr Chairman, in regard to the report of the subcommittee. Not being a full fledged member of the resources development committee, I am at a slight disadvantage as to how the list which is contained in the report of the subcommittee was made up. I understand that there is a so-called "B list" which names three additional groups to appear before the committee, those being the Essex-Kent Federation of Agriculture, the Mennonite Central Committee-Ontario and a group to be designated by the Liberal members of the committee. Then it says the subcommittee may change these last three groups as the hearings progress.

1610

We are only talking about three groups, maybe four at the most, from what I can determine from this report. I do not think it is appropriate, since the crisis in the farm community is so great, so severe and so deep, to have an A list and a B list. I do not want to go home to Essex county and tell the people in the Essex-Kent Federation of Agriculture or the Essex federation or the drought committee that has been formed by farm leaders in Essex county that they are on a B list. I do not think we have the luxury at this time to have A and B lists.

The committee has waited for the return of the Legislature to undertake this important work. We are all here, we are all prepared to meet and we are all prepared to put in the time that is necessary to hear these organizations. So I would like the committee to have one list, and that is the A list, and to hear from these important organizations that are going to have a great deal to tell us.

I only read back to the minister and the government the minister's own words, where he states in his report—I cannot find the paragraph at this moment—in his opening statement that he wants to hear from the farmers and the farm community and the farm leaders so that he can better address and try to resolve the problems, the great crisis that is facing the farm community. With all due respect to everyone here, I do not think we can do it with an A and a B list.

The Chair: I appreciate that. Your concerns obviously now form part of the record. I can only remind you that all three caucuses participated in the subcommittee process. I appreciate your comments very much.

Mr Mancini: Further to the point of order, Mr Chairman, in view of your remarks, I am at a slight disadvantage because I do not know the criteria the committee and the subcommittee worked with. Were they instructed to have an A and a B list? Were they told that the list of presenters could only reach a certain number and that only if we had time could we have a B list? I think this is important. I think we have to talk about it.

The Chair: I appreciate that and the committee may well choose to discuss that now, rather than pose questions to Mr Buchanan. At the same time, you might want to talk

to your people who were on the subcommittee and who engaged in that process.

Mr Mancini: This is an all-party committee. We need agreement from all parties in order to eliminate an A list and a B list, and that is what my plea is this afternoon, on behalf of the farm organizations that have been relegated to B status.

The Chair: I appreciate your comments. Perhaps Mr Hayes wants to speak to what I am not really convinced yet is a point of order but is an interesting issue none the less.

Mr Hayes: I have no problem with that, Mr Chair. As to the other groups on the so-called "B list"—I have no problem putting them on the same list. I think we can probably accommodate that. It is probably an oversight. I do not know.

Mr Mancini: I appreciate the generosity of the parliamentary assistant.

Mr Hayes: I would suggest, though, to Mr Mancini that he should talk to the member on the subcommittee from his party and find out just what he or she agreed to.

Mr Mancini: Yes, I have.

Mr Waters: The so-called "B list," as I understand it, was to allow us some flexibility as time ran down. That is what it came out of. The reason their names existed there at all was that we could have left those hours open and not denoted anyone, but we thought these people should be a priority. That was why we chose to spell out that if there was time enough to allot for this, these people could come on.

The Chair: What you are suggesting is that B in no way designated some sort of inferiority.

Mr Waters: No, it did not. It was just a series of going down lists. We were worried about running out of time so we wanted to make sure there was not somebody else slipped in. Actually we were giving these people a priority, rather than not giving them any.

The Chair: Mr Arnott is shaking his head. I think he would really rather not be involved in this particular conversation.

Mr Cleary: Maybe before this day is over we could talk to our people and make a decision on that and get back to you.

The Chair: The subcommittee can do anything it wants, within limits. I have even learned that there are limits, but the subcommittee can do anything it wants in terms of the agenda and bringing it back to the committee and having the committee make a decision in that regard.

Mr Buchanan wants to get involved in this conversation. Far be it from me to discourage him.

Hon Mr Buchanan: I would like to reassure Mr Mancini that I have talked to the Essex drought committee and agreed to meet with it, tentatively a week from today. We are trying to find some time in my schedule to accommodate them at that meeting. I offered to meet them as early as today or tomorrow. I understand their next meeting is not until this Thursday and next Monday was as early as they could come. If they can be accommodated at this table, that is fine. If they cannot, just let me say that I invite representa-

tives from your caucus and from the Conservative Party to sit down at that meeting with them. We have nothing to hide. We would like to have an open meeting and we can sit down and discuss the issues they are bringing forward.

Mr Mancini: Both myself and Mr Hayes are members of that committee, but that is not my point today. While I appreciate the minister's generosity, and I understand he took some time to meet with the drought committee over the weekend to try to set up a date for a meeting, my concern today, this afternoon, is that the subcommittee has prepared a list. It appears that there is an A list and a B list, and not only do the farmers in Essex county and Kent county have the same problems as farmers all across Ontario, but we have had the worst drought in 40 years and I cannot sit back and have their concerns relegated to a B list.

Mr Cleary: You said, "Last week I announced that an estimated \$93 million in interim payments under the gross revenue insurance program will be put into the hands of enrolled farmers, beginning in mid-November." So you say that in mid-November that money will start to flow.

Hon Mr Buchanan: That is the plan, yes. There have been many negotiations going on over the summer among the provincial governments across the country, as well as with the federal government, to try to get this up and running, to get the money out as quickly as possible, and the target now is mid-November to have cheques start to flow.

Mr Cleary: So you feel the problems have all been ironed out between the two governments.

Hon Mr Buchanan: Most of the major problems have been ironed out, and we expect to be able to sign the agreement within the next few days.

Mr Offer: Very briefly, there is the issue of borrowing costs. Debt financing is crucially important to the agricultural sector. Could you confirm how much money has been allocated by the government in this area?

Hon Mr Buchanan: That is a program we were looking at to be the centrepiece of our agricultural policy for next year. The allocation to that kind of program would be set aside for the 1992 budget. Hopefully we will have something to announce as a framework in November of this year, do the consultations in November and December and have it finalized so something can be announced in the spring.

Mr Offer: Just as a very quick follow-up, you will recall it was about 13 months ago that a very specific promise was made by your party, then in opposition, to the agricultural communities in this province, stating that \$100 million would be set aside to meet this very critical need. First, can you confirm today how much money has in fact been set aside to meet the promise specifically made by the Premier and second, can you also confirm that you will be setting aside at least that amount of money so that the promise you made and the need which is in existence can be met?

1620

Hon Mr Buchanan: I believe you are referring to the election campaign of the summer of 1990 where a suggested figure of \$100 million was to be made available at reduced interest. It is my determination that the \$50 million we put into the current year's program goes far beyond

that, making \$100 million available for loans at reduced interest; \$50 million can subsidize the interest on a lot more than \$100 million.

I expect we will be able to do as much for the farm community in the coming year as we have done this year. The \$50 million this year went far beyond that. It was not in making money available; it used existing lending institutions. We are still working on the plan we will have for this coming year, whether we will use existing institutions or loan the money directly. I cannot give you an exact figure. I just reassure you that we will at least do as much as we have in the past, if not more.

Mr Mancini: I am very confused by your answer and I am sure that most people in the farm community would be confused by your answer if they had in any way paid attention to the campaign promises that were made some 13 months ago and had a chance to view the Agenda for People.

It was very clear in the agenda that you were going to make \$100 million available to the farm community for long-term debt financing. That, to me, spells out a very specific promise, that you were going to go to the financial institutions, make long-term financing available—long-term financing is 25 years; that is what a long-term mortgage is—and you were going to subsidize with \$100 million the cost of that financing so that the farmers could afford to keep farming for another generation.

Now you are confusing us and the general public by saying you have spent \$50 million and, no, that really was not your promise. Exactly what was your promise and what was this \$100 million for and what is long-term financing, in your view?

Hon Mr Buchanan: Long-term financing is certainly something in the order of 20 years. To make \$100 million available at reduced rates is one thing, and that is what I am talking about. I do not think that is enough, to be honest with you today. Being around the farm communities, I do not think \$100 million is anywhere near enough. The \$100 million was not for interest assistance.

Mr Mancini: That is exactly what I said, Minister, with all due respect. The \$100 million was to be used as leverage to get financial institutions to lend many more times that and the \$100 million was going to be used to subsidize the loans to farmers. Of course the \$100 million was going to be used for leverage. Which side of the coin are you on?

This is an important matter of debate because we want to know whether or not this promise, solemnly made to the farm community, is going to be kept. It says, "Each 1% increase in interest adds \$9 million in interest charges to Ontario farmers' costs." That is what your policy stated at the time, so it was very clear at the time what you were trying to get at. You talk about long-term financing; you told us today that is at least 20 years. Now, tell us, are you changing the policy? Are you reneging on the promise? What are you doing?

Hon Mr Buchanan: We certainly are not reneging or changing our policy. We are currently trying to design a program which will address the long-term interest problems

faced by the farming community. We expect to have a paper in November which will lay it out for the farm community, and the politicians as well, to comment on. They can then decide whether or not we have lived up to our commitment to the farm community.

Mr Arnott: Minister, I would like to get off the \$100-million promise and get back to the \$50 million that has apparently been committed. In your statement you talk about \$36 million that has already been handed out to 7,700 farmers. We assume there is \$14 million outstanding somewhere. Are there more applications outstanding at the present time?

Hon Mr Buchanan: Yes, there are.

Mr Arnott: So you can give your firm commitment that \$14 million in additional money will be in the hands of farmers this fall.

Hon Mr Buchanan: Absolutely, unconditionally: I just hope the \$50 million will be enough.

Mr McLean: Minister, can you tell a farm boy from Dalston how \$50 million is worth as much as \$100 million?

Hon Mr Buchanan: One is \$50 million and one is \$100 million, but they were distributed in different ways.

Interjection: Which is more?

Hon Mr Buchanan: Let me be quite honest with you. I thought we could get together a long-term interest program last fall, but I was on a bit of a learning curve at the time and soon discovered that getting a long-term interest program in place that would meet the needs of farmers for 20 years is not put together in a short couple of months, so we went quickly.

Mr Mancini: You mean this document was not checked out?

Hon Mr Buchanan: It is one thing to have an idea; it is another thing to put it into practice so that it will work for farmers. One of the things I certainly did not want to do was put a plan in place that had a lot of problems with it. In the few months in the early fall when I was in this position I soon learned about some of the programs that had been implemented in the past that had a lot of problems associated with them. I did not want to repeat old mistakes, so we went with the short term and we are looking at the long term for the coming year.

Mr McLean: Then you are going to bring in a program for \$100 million to subsidize the farmers, a long-range program for the farmers on mortgages. That is still something you are working on. The \$50 million you have already given out now is a different program than the \$100 million. Is that right?

Hon Mr Buchanan: Absolutely: It was a short-term program. If someone wants to say it did not go all the way, it went as far as we were able to go last fall.

Mr McLean: What you are telling the farmers today then is that they can count on the long-term program whereby the government is going to put in \$100 million to help subsidize their mortgages.

Hon Mr Buchanan: They can look forward to a long-term program which we are going to do consultations on this fall.

Mr McLean: Could I have the reasons why, when you tagged on to the federal program, you did not tag along for the 1991 payouts instead of having it for 1992? This is the net income stabilization account program.

Hon Mr Buchanan: The NISA program. It is a common question that I am asked. Very quickly the NISA and gross revenue insurance plan programs were a package. In terms of allocating money, we decided to allocate money for GRIP. We decided it was more important to put \$50 million into an interest program than NISA, because NISA tended to be a long-term program to address the bad years. If everyone puts money in during the good years, there is something in there in the bad years for them to draw out. There was a determination that the program for this year, as it was laid out originally, did not meet the immediate needs and it might be better to put the money into interest assistance, which is what we did.

Subsequent to that and within two weeks of the budget's being tabled in the House, there was a second offer made, which said, "If you come in now, we'll give you a bonus." The federal government offered to enrich the NISA program and tried to get the province to come in. It was too late at that point for me to participate in that program. The budget had been set, the allocations we had were given and I had no opportunity to respond. I think I had something like 48 hours to tell my colleagues in Ottawa whether or not I could participate, which was not enough time for me to do all the work I needed to do.

Mr Hayes: Minister, I noticed that in your opening remarks you mentioned you were going to briefly outline how we arrived at the current grave state of affairs in agriculture. You mentioned the trade war between the United States and the European Community, the uncontrolled export subsidies, the non-tariff trade barriers, the Chicago Board of Trade and so on.

Mr Mancini: Mr Chairman, on a point of order: My understanding is that in committee we generally follow the rules established in the Legislature, and in the Legislature it is inappropriate for the parliamentary assistant of a particular minister, particularly if he is the parliamentary assistant in that ministry, to question the minister. I find it very odd indeed that in this committee, where time is so limited, the parliamentary assistant to the Minister of Agriculture and Food is questioning his own minister. I ask for a ruling whether or not that is in order.

Mr Hayes: Can I respond to that, Mr Chair?

The Chair: There is no need to respond to that, Mr Hayes, because I have heard Mr Mancini's comments and I am satisfied there is no valid point of order there. Please go ahead with your question.

Mr Hayes: Thank you, Mr Chair. I could have maybe made a statement and that would have taken care of Mr Mancini.

The Chair: Proceed with your question.

Mr Hayes: My question is, Minister, that I think there are some other factors and I am surprised that you did not really go beyond how the farmers got here today. I think there are some issues with interest rates and things of that nature. I would like you to respond to that. Also, a lot of people are talking about the recession we have had for the last two years. Maybe you could tell us, in your opinion, how long the farmers have been in a recession in this country.

Hon Mr Buchanan: Basically the farm community has been in a recession in terms of commodity prices since the 1981 recession. There was one year in the late 1980s when commodity prices seemed to go up a little bit in some areas, but generally speaking the farm community has been in a recessionary time since the early 1980s. That is one of the difficulties facing farmers, the high debt load. Because of the very high interest rates in the early 1980s, through no fault of their own they incurred large debts, tried to expand their operations over the course of the 1980s, and never have had a good year or two to set money aside to buffer them during the very difficult times. This is something that is not just occurring in the farm community. Other manufacturing sectors are suffering. Farmers have been suffering probably for the last 10 years, and one of the reasons why people are talking now in terms of the crisis is that there is a sense in the farm community that farmers are at the end of their rope in terms of the difficulty they face.

1630

The Chair: Mr Klopp, very quickly, please.

Mr Klopp: As you know, we talk about the trade wars and you can blame a lot of people a lot of times all over the world for a lot of problems. Do you have any ideas in your mind on how we could protect the farmers here in Ontario from the situation out there, any ideas at all?

Hon Mr Buchanan: There are different commodities and different farm operations that can be assisted in different ways. In terms of the supply-managed commodities, protecting article XI at the GATT talks is the best way to support the milk and chicken feather industries.

In some of the other areas where we want to be participants in the export market, we are going to have to live with free trade and international prices, and we have to try and be competitive in that area. We are looking at how we can encourage producers to come together. I encountered this with a grain farmer in Essex on Saturday, where he said he could not put together enough corn to make a shipment. He could have gotten a better price if he had been able to come together and put together a larger shipment. I think what we can do as a government is help producers pool their product in order to get a better price. Working with the farmers and the farm community, I think we can address some of those concerns.

The Chair: Thank you very much for your time this afternoon, and I am sure you will be monitoring the comments and conversations that take place during the course of these hearings.

Mr McLean: On a point of order, Mr Chairman: Does the minister meet with his parliamentary assistants at all? It is interesting that both parliamentary assistants to the

Minister of Agriculture and Food are here today and they have to come here to ask him a question. Does he meet with them periodically?

The Chair: It is an interesting comment that you make. Thank you.

Mr Mancini: A complete, total setup to use up the time of the committee; that is all it was.

The Chair: Thank you, Mr Buchanan. Thank you, Mr Mancini.

CANADIAN BANKERS ASSOCIATION

Mr Mancini: I would ask if the witness is as evasive as the minister.

The Chair: Please, Mr Mancini.

Mr Mancini: I am just trying to help out, Mr Chairman.

The Chair: I appreciate the help so far. I have not really felt any need for it. I will let you know when I do.

The Chair: We now have three gentlemen from the Canadian Bankers Association. Perhaps if they would come up and have a seat, please. Tell us who you are and commence with your comments. Please leave us at least 15 minutes for questions.

Mr Zilkey: There are actually four representatives from the banking community here today. We have added one we forgot to tell you about. I would like to introduce the people at the table. We have George Arnold, who is the agricultural services manager for the Royal Bank for Ontario. We have Rich Mountjoy, who is the agricultural manager for the Canadian Imperial Bank of Commerce for Ontario. Brian Farlinger is director of commercial affairs for the Canadian Bankers Association. My name is Gary Zilkey. I am chairman of the national agricultural committee of the Canadian Bankers Association, and I am with the Bank of Montreal. We also have Bill Fulton and Cathy Frederickson with us. Bill is with the Canadian Imperial Bank of Commerce and Cathy is with the Canadian Bankers Association.

What we would like to do, with your indulgence, is make a very brief statement in terms of how we view the situation at this point in time. We have some material that we would like to distribute to the committee. We have not been able to get it to the committee prior to this date, and it contains some information relating to the volume of loans, the timing of loans. It is actually a copy of the brief that we presented to Pat Hayes's research group when it was looking at this subject last winter and spring. There is some material there that we believe would be useful in terms of providing some background to the committee. This also contains a review of some of the information we had over the last decade, and I notice some of the comments and questions talked about the position during the last decade.

One of the things we would like to start with is to say that it is always darkest before the dawn, in a sense, and falling away from the script here, yes, we are in a commodity price situation right now that is in real terms probably at its lowest levels in my memory. My memory—these are grey hairs—does not go back to the 1930s, but I would assume that in relative terms commodity prices are fairly low.

Having said that, there is quite a difference in the way people in the agricultural community are managing or coping

with the current situation. Some individuals, some of what I would call your top managed farms in the province, have foreseen the situation and made adjustments in terms of their method of production and in their operations. There is quite a difference in agriculture in terms of style, management and size as to how various people are approaching the situation. The prices impact everyone. Some people have managed their way towards these low prices, others have not.

As somebody also mentioned, there are many sectors in agriculture and each one deserves a different approach. Livestock, the beef industry, for instance, has actually had a fairly good series of years in terms of prices and relative economics. The hogs have also had a relatively good period. They are now in a scenario where volume is increasing and prices are decreasing. Anyway, what I want to say is that our successful customers have recognized the reality of the economic situation and their cost structures have adjusted.

I should read the script here. I have a tendency to wander, so I will come back to the script.

Income declines have clearly reduced repayment capacities this fall and reduced borrowing power for many of our customers. There are individuals who have been able to cope very well, but the industry generally is in some degree of difficulty with respect to cash flow this fall caused by low prices.

Continued low incomes will likely lead to further rationalization in the agricultural industry, in our opinion. It is important, however, not to overstate the impact of the price declines. We have not seen any noticeable increase in non accruals or in problem farm accounts as a result of the current situation.

Our statistics are a little bit in arrears in terms of this, so there may be material coming through the pipeline right now that we are not aware of. We have conducted internal surveys and basically we know there is a cash flow problem, but we have not seen it at this point in time as a significant additional exposure in terms of problem accounts. We do believe we are going to be able to manage, on an individual case by case basis, with many of those accounts in terms of doing various things to move them through this cash-flow period to the November payment of the gross revenue insurance plan. I endorse that as an excellent move in terms of an interim payment up front on GRIP. That is going to be very useful in getting cash flow into the system.

The full magnitude of the current income decline will not be known until next winter and spring when we start going through our annual reviews with customers with respect to lining up operating loans for next year.

As you are aware, realization of collateral security pledged to a bank by a farmer is a measure of last resort, and we would not take that precipitously unless there was fraud or some suspected fraud involved in our case. We go to great lengths to explore every viable option in terms of restructuring an insolvent farmer's loans and we work very co-operatively. We have learned, and I think it has been a mutually good experience, to work with the Ontario Farm Debt Review Board in terms of situations. However, where there is no light at the end of the tunnel, neither the bank nor the customer has any other recourse, but that is after the full series of things are resolved.

We believe that the payment under GRIP will help alleviate the cash flow problem. We fully endorse the GRIP program. We have some concerns about the way the program operates, but it is not our program. We are on the side. It is a program between the various levels of government and the farmers and any changes must be made by those two principal participants. From our point of view, we endorse the program as being quite sensible as a long-term solution. It is a year-to-year thing, but it should help in the long term.

One caution regarding the GRIP program: As you are aware, 10% of the farmers in Ontario did not sign up for the program, so they are at risk in terms of benefits under the program, and there are a number of farmers, obviously, who do not grow crops and who are not covered by the program. There are also many crops that are not covered by the program, so it is somewhat of a selective solution to the problem.

In the material we will hand out, we indicate to you that there are a number of options farmers have looked at in terms of solving the problems. They are not always palatable options from a social, political or even an economic point of view. They have involved increased emphasis on off-farm income. They have involved looking at lifestyles and things like that. But they are different things that individuals have looked at in terms of trying to resolve the situation.

I would like to conclude my brief comments by emphasizing the importance of good communications between farm customers, including farm customers who are in financial difficulty, and the banker. We may not be portrayed as this all the time, but we are human beings and when we see an individual walk across the street and down and back, we do get a little bit edgy, rightly or wrongly. Come and talk to us. The earlier we are made aware of a situation, the more likely we are to find a solution.

In a similar vein, we are interested in working co-operatively with government and with industry in trying to find solutions to this current problem and to the longer-term problems and opportunities that affect the industry.

1640

Mr McLean: I would like to find out from you how the farmers' costs, hydro and all their expense for machinery and everything, keep going up by 10% or 11% every year. The cost of the product they are producing is not going up and in some cases is going down. Can you tell me how it is ever going to balance out, where the farmers are at least going to make a living on the farm? It just cannot continue to go that way.

Mr Zilkey: If I may answer that by taking a little bit of a longer-term viewpoint towards the situation, we will talk about crop farming specifically, because that is where the majority of the problems are right now. Corn, soybean and wheat, basically, are crop farms.

The 1970s will go down, maybe, as an aberration in history, because they provided such unique and mammoth cash returns to crop farming. The simplest way I could explain it is that I graduated from university with two individuals I can think of. One started farming in 1967 and he quit farming; he was forced out of farming in 1969. The

economics of the time dictated that. Another friend started farming in 1971 and he had his farm paid for in 1973 as a result of what happened in terms of cash returns during that period of time.

Being an optimist—and I am; I think you have to be an optimist to be part of this industry—in terms of an answer to your question, it is almost one of hope and by golly. In other words, the industry has been cyclical in the way it has been approached. We went through 10 relatively good years in the 1970s. We have now gone through a period of very poor years.

We currently are faced with a situation whereby there is good demand for our crop products worldwide. There is not the buying power to facilitate or back up that demand. People do need the food. They just do not have the dollars. There are things that need to be done so that we may get there. What we have to do is live through the short term to get to that point.

Mr McLean: You are not answering my question, sir, because there is no way that you can continue to increase costs when the cost of our products keeps going down. My question is, how are we going to reverse that? You cannot do it all as bankers, and the minister cannot do it all as minister. There is something wrong in the country, and I would like to know what it is.

Mr Zilkey: I do not have any magic answer for the price issue, and it is largely a commodity price issue. In real terms they are at all-time lows or close to all-time lows.

Mr McLean: It is the lowest I have ever seen it and I have been farming for 30 years.

Mr Arnott: I am wondering what consideration has been given by the Canadian Bankers Association to undertake a program of special leniency towards the foreclosure issue in these troubled times.

Mr Zilkey: We approach situations very much on a one-on-one basis. We have general guideline policies under which we operate, but one of those policies specifies, "Thou shalt"—as an account manager or a bank manager—"deal with the situation on an individual basis." We have provided our people with guidelines in terms of steps they can look at, so there is an internal training information job. Also, as part of that, we have worked with the Ontario Farm Debt Review Board in terms of looking for that outside third-party mediation process, and we have found that innovative and unique situations have come up.

Contrary to what you may read in the media, nobody wins in a forced bankruptcy situation. We certainly do not and neither does the individual. So that is the last alternative we look at, but our role is one of low risk, which involves security. We are a secured lender and we will realize on the security if we have to, as a last case, but we do follow a step of procedures on an individual basis leading up to that.

Mr Farlinger: May I just add a statistic. We recently commissioned a study on small businesses and found, a little to our surprise, that on average it takes eight months for an account to go from a satisfactory to a problem loan status, and then a further nine months from classification as a problem loan until formal call of the loan. During that

period there is an exploration of all possible options in resolving a customer's difficulties. The most typical solution was a refinancing of the loan package, and then on average a further 32 months from the call of the loan to completing the realization of the security, so you can see it is quite a long process.

Mr Arnott: My question, though, was, has there been any special consideration given to enhancing the leniency given today's troubled times? When you made your description of what happens, it sounded like that has been a policy for the past number of years.

Mr Zilkey: The past four or five, up to 10 years, basically, depending on the financial institution that is involved. I will speak for my own bank in this particular case. We have not put out a special set of guidelines with respect to the current situation this fall in Ontario. What we have done is to survey our people to determine, as best they understand it, what the magnitude of the problem is. One of the indications we have received back from our people is that there is a problem, but it has not impacted significantly on the risk or additional exposure this fall, as we see it.

Basically we will work through to when GRIP kicks in. Its cash flow will start this fall. The bulk of the cash flow will come almost a year from now in all probability, so we will try to work through until that cash flow is realized.

Mr McLean: Has the Ministry of Agriculture and Food asked you for input for its long-range plan?

Mr Farlinger: We have been involved in discussions with the consultant retained by the minister.

Mr McLean: Oh, they have a consultant firm that is being paid to do this.

Mr Klopp: Just in the vein that Mr Arnott brought up, in all fairness, with looking back at small businesses—and I have always said farmers are small businessmen—and this waiting until next year, we have been in about a 10-year low. As a farmer, I guess next year is going to get better. I think farmers generally want to pay their loans and I am glad to hear you are looking at the situations as individually as possible.

My thought is that you should really be helping out your bankers in your areas to realize the situation and not put any more undue pressure on that formula, and maybe even ask the farm debt review people how they can help work with you. I certainly feel that has to be done and I hope you are giving some thought to that. My only thought is, are you at this time thinking about even giving some more direction to your bankers at the grass roots and listening to them as they come to talk to you about the situation, more than just asking them to fill out some forms?

Mr Zilkey: We have not done anything formally at this time, but yes, we are. In terms of waiting for next year, one thing I mentioned is that it relates to GRIP, which will provide an income stream for this year's crop based on volumes, and it will take into account the average price levels. But the bulk of the income or the bulk of the cash flow from that will not be experienced until September or October next year.

What we will try to do is to manage through on an individual basis, knowing that it is coming for those farmers who are enrolled in that program. We will try. We will certainly take your words under advisement, Paul, and we will try.

Mr Waters: I want to visit a couple of things. Do you feel there are too many farmers within the province at this time?

1650

Mr Zilkey: We deal with communities. We deal with all people who bank or live in those communities and bank with us in some fashion or other. In terms of agricultural programs and policies, we focus on what we call the commercial farm end of it, which is not all farmers. There are many people who are farming and should be farming, as a way of life or as various steps up the ladder. In terms of people who are living in rural areas and farming, regardless of how the nature is, there are never too many, in terms of answering the question, but a lot of them do have off-farm incomes. There are a lot of different situations involved there.

In terms of looking at the commercial end of the entity, of the industry, at sort of a 20-80 rule where 20% of your producers produce 80% of the product, or 10-90 may even be closer to reality, barring some major change in the way international agriculture and Canadian agriculture are structured, the tendency will probably be to try to shrink the numbers at that commercial end of the spectrum, and by definition increase the economic size of that end, but it still leaves a fair amount of opportunity for people to farm, in a sense, and live rural lifestyles.

Mr Waters: Historically, as a taxpayer, I have seen the government spend money time and time again with the farmers, trying to help them out of crisis after crisis. The other part of the question I want to ask is that I was wondering whether you could give us your view of how we could spend money in the short term in such a way as to affect us in the long term so that we are not back here in two, three or five years; in other words, alleviate the immediate crisis, but in such a way that it affects the long-term financing of farming in the province.

Mr Zilkey: That is a big box you have given me.

Mr Waters: In 10 words or less.

Mr Zilkey: I wish I had the answer to that. I am afraid it is not as simple as one major program or one catch-all program. It is probably a series of moves. I think we are relatively well positioned, in terms of grain and oilseeds, in the longer term as a result of the combination of the net income stabilization account and gross revenue insurance plan programs. I view them both as long-term programs. They are going to take some years to kick in. I guess the simplest way I could answer, and it is an oversimplification, is to supplement incomes in the short term in what I would probably call an administratively efficient manner, which I would interpret as not creating a monster that would cost half the dollars, that type of thing, to administer.

Beyond that, you would have to look at each of the other sectors in terms of bringing in the beef and beyond that, but in terms of the grain and oilseeds it is probably beyond that in numbers, small things here and there that

you can do to improve management efficiency. Going back a little bit to financial management training in the long run, I guess a high emphasis on our part in terms of initiatives would increase that.

Mr Hayes: Mr Zilkey, in your very good brief that you made to the Agricultural Finance Review Committee back in December, at the bottom of (d) you made the comment: "Farmers often make production decisions based on government policies and programs rather than market requirements. Frequent changes in government programs have created a measure of uncertainty for the industry, and have made long-range planning extremely difficult." Would it be possible for you to elaborate on that for the benefit of this committee, please?

Mr Zilkey: I can give you a couple of examples and relate them to the GRIP program, and I will relate them out of province, if I may. That way I am fairly safe in terms of media or whatever. We have a crop, primarily grown in western Canada, called lentils. Normally there are about 200,000 acres in lentils and it is a very fine market. Any underproduction will shoot the price one way or the other. As a result of the initial price, or the GRIP price, the acreage of lentils went over 500,000 this year; it more than doubled. That is an example of farmers selecting on the basis of a government program.

One of the interesting things about the GRIP program is that it is commodity-specific at this point, as opposed to including all crops. There are pros and cons of looking, but while it is commodity-specific it will create those opportunities. People will select for or against it from a policy point of view, on policy rather than market signals. Wheat was another classic example this year. The acreage of wheat increased across Canada and the only signal was GRIP with respect to that increase. All other signals should have dictated a decline in acreage.

Mr Dadamo: Do you have staff who might go to a farm to study potential problems they might have and tell them what they could do to keep afloat?

Mr Zilkey: We do not tell them, or we try not to tell them what they could do to keep afloat. We are an input supplier. It is always a fine line. We try to advise them and work with them. We are not so presumptuous. If we are going to farm, we should get out there 365 days and do it, that sort of thing. We do have staff. We have support staff. Our direct linkage with the individual farmer is our account or branch manager who is involved, but he or she does have the access to support staff throughout the province.

Mr Cleary: I think I heard you say a bit earlier that you have no more of a problem collecting your loans this year than in previous years.

Mr Zilkey: At this point we do not foresee, overall, a significant problem in that. I mentioned in the brief that the proof is in the pudding. That is based on a survey we have conducted with our people. The proof in the pudding will come this winter and spring when we sit down and do a lot of the annual reviews.

Mr Cleary: Would I be correct in saying that you would be in favour of a permanent program rather than

putting more patches on the boot? In having temporary programs, you would like to see a permanent program.

Mr Zilkey: I have referenced a little bit to what I think the industry would like, and that is why I referenced GRIP and NISA as being around for a long time. I see them as beneficial if they are because they are permanent programs the industry can work with. We as bankers want to work with them as well. We find them beneficial, but again I will go back and mention that we are not the be-all and end-all. The details should be worked out between the government and the farm groups. Those are the two primary constituents. If I could jump a little bit here with temporary programs, we would try to work with government in terms of delivering or administering them if we can come to an arrangement whereby they can be expedited. We are interested in that.

Mr Cleary: A few moments ago you mentioned full-time and part-time farmers. Do you have any breakdown on the percentages of full-time and part-time farmers that you do business with?

Mr Zilkey: No, I do not have that material offhand. With respect to Ontario, it will contradict a little of what I said before, but we do know there is a slight increase in the number at the upper end of the size spectrum, the larger farmers. The group that is being pressured in terms of numbers is the medium-sized farmers, usually with incomes of \$25,000 to \$100,000, that type of thing. There is also an increase in part-time farmers. Let me define that as those farmers who have relatively full-time off-farm income and who are farming around a full-time job, basically. There has been a large increase in those numbers.

Mr Mancini: I want to go on record as disagreeing with Mr Pat Hayes as to his view on the CBA brief, dated December 1990, which was presented to the standing committee on finance and economic affairs. Mr Hayes found the brief to be quite helpful. To be very honest with the gentleman before the committee, I find some portions of it quite disturbing.

Mr Hayes: On a point of order, Mr Chairman: Just to respond, if Mr Mancini takes offence—

Mr Mancini: That is not a point of order.

The Chair: I will decide that in due course.

Mr Hayes: Perhaps Mr Mancini would sit here and please, let's deal with the issue in front of us in trying to do the best we can for the farmers of Ontario.

Mr Mancini: I do not need to be lectured by Mr Hayes. If he has a point of order—

Mr Hayes: I made a statement that it was a good brief, not that I agreed with everything that was in the brief.

1700

The Chair: Thank you, Mr Hayes. That is not a point of order, but it was well put. Mr Mancini, please.

Mr Mancini: Mr Hayes has again stated for the record that he thought your brief was good. I find your brief disturbing in many areas. You state in your brief that, "In summary, it is our view that the availability and cost of credit is not a limiting factor on the profitability of established

commercial farmers who exhibit good management skills." I would have to severely disagree with that. I find that the availability of credit and the high cost of credit to farmers has severely restricted their ability to be successful farmers. I think that is a large portion of their cost and any one in the banking business would know that farmers in general—at least farmers I know in Essex county and southwestern Ontario—view the availability of credit and the cost of credit to be a really onerous burden. That is why governments in the past have done it. This government of today has pledged, we are not sure yet whether it is \$50 million or \$100 million, to leverage low-cost interest loans. I would say that farmers would be bankrupt in droves if government did not help them with their interest rates in the past, present and future.

You state on page 2, "As we indicate later in the brief, Ontario agriculture is, on average, in a relatively strong financial position." I do not know what to say about that statement. We are in a major crisis in the farm community. I know that in Essex county probably 20% to 33% of all farmers could be in financial jeopardy. A thousand farmers attended a meeting a couple of weeks ago, in Lucknow, I believe. They were not there because they wanted to go out and have a cup of coffee. They were there because their farms are in severe financial crisis.

The minister himself has stated that agriculture is in need of a cash infusion. I am assuming he is making those comments based on fact and data either collected by this consultant he has hired or by ministry staff or by the political work they are doing, so I personally cannot agree with your comment that on average farmers in Ontario are in a relatively strong financial position.

The Chair: Mr Mancini, you will also find that you have gone three minutes over the time allotted to your caucus. Can you be brief, please.

Mr Mancini: Thank you for your advice, Mr Chairman. I will turn then immediately to page 12 wherein it says in your brief, "Under normal circumstances, experience suggests that government should avoid initiating and participating in credit and financial support programs or any other program that causes a distortion in the marketplace." I say with all respect that the United States of America and the European Community have already distorted the marketplace as much as it can be distorted, and if the Canadian government, if all the Canadian provincial governments, do not intervene with some kind of counter-measure, Ontario will not have a farm industry and we can kiss all our farmers goodbye.

The Chair: Do you gentlemen want to respond to that?

Mr Zilkay: Perhaps I could respond quickly. First of all, and I do not want to take the temper of the comments too far out of context, some of those comments were written last fall and they really do not apply to the current cash flow situation affecting cropping farmers.

With respect to the strength of Ontario agriculture, I should explain that my background until about two years ago was western Canada. One of the joys when I came here was the diversity, and from that you get tremendous strength. The diversity of the agriculture here is quite remarkable. I do

not want to minimize problems. They are there but they are not as great. You are not a uni-commodity sector as we would find in Saskatchewan, for example. The problems currently are very great there comparatively speaking. That is relative and it does not change the fact that the situation is not good.

Within the province, Essex county has had an extremely bad production year, and there is no doubt about it, and then it gets progressively better as you go farther out to the point where when you get out to the Brockville area or some other areas, they have above average yields. That does not change the price, but in fact we have some areas with better than average yields.

The Chair: We appreciate your interest and your involvement in these particular hearings. We look forward to the report and I trust you will be getting copies of it.

ONTARIO MILK MARKETING BOARD

The Chair: We now have people appearing on behalf of the Ontario Milk Marketing Board. While there may not have been Niagara fruit juice here, there certainly was milk. Would you please tell us who you are. Try to leave us 15 minutes for the conversation which is going to flow from your comments.

Mr Core: I am John Core, chairman of the Ontario Milk Marketing Board. I am a dairy farmer from Lambton county and I did milk cows this morning. I doubt if Mr McLean can even claim to do that.

Mr McLean: I was at the farm.

Mr Core: Were you at the farm? Excellent.

The Chair: Some people would suggest that as politicians, we merely milk the system.

Mr Core: I have with me Wesley Lane and Peter Gould from our staff. Certainly it is a pleasure for me today to bring you a few comments on behalf of the Ontario Milk Marketing Board. I must apologize that these are simply in point form because of the time involved in putting it together, but I think we do in fact have a crisis facing us in agriculture in Ontario and across Canada. I want to share with you some of our views from supply management and tell you how big our industry is, how we went about solving a crisis that faced us 25 years ago in the milk industry in Ontario and offer you some concerns I have about the GATT negotiations and the directions they are taking right now.

First of all, Ontario has 9,000 dairy farms. That represents about 14,000 families whose livelihood depends on milking cows. Last year, 2.34 billion litres of milk were produced and that represented a farm-gate value of \$1.2 billion. At 1989 cash receipt levels, that means we are responsible for 20% of the farm cash receipts in Ontario from the single commodity of milk.

The crisis in agriculture results currently from the fact that returns to producers in many commodities have been chronically low throughout the 1980s. I know that personally because on our family farm, which I and two brothers operate, about one third of the land base is used for the cow herd and the other two thirds of the land base is used to grow corn, soybeans and winter wheat. So I have personally observed what has happened to commodity prices.

Low commodity prices combined with high input cost create a cash squeeze. Farmers in non-supply-managed commodities survive through a combination of using up equity and government assistance. There are limits to equity and it is a double-edged sword which drives up costs. Presumably there is a limit to public support as well. The crisis in agriculture, and I want to emphasize this, did not happen overnight. It has been building over a period of upwards for 10 years.

What are the causes of low prices for non-supply-managed commodities, particularly the grains and oilseeds that are in crisis now? They are rooted in the General Agreement on Tariffs and Trade. World and market prices are determined by government-subsidized exports, reportedly costing taxpayers around the world some \$200 billion annually. Canadian producers are victims of US and European Community trade wars. Prices no longer bear any relationship to supply and demand, input costs or considerations of efficiency. The net effect is no return on investment and negative returns to labour.

I am the first to recognize that there are all differing levels of efficiency on farms. Different managers have different skills and different managers entered farming at a different time in history. They may have high equity or low equity. There are all different types of farms and farmers out there, but I think it is fair to say generally that in the grains and oilseeds sector today there is very little return on investment and labour.

Canada's approach to supply management: The marketing system for feathers and dairy, which is virtually unique to Canada, is predicated on allowing producers to earn fair returns for their labour, management and invested capital. I want to emphasize that we provide the opportunities for producers to achieve fair returns. We do not guarantee returns to producers but provide them with the opportunity to achieve fair returns. These are achieved with minimal transfers from the public sector, and to date nothing remotely resembling a bailout.

1710

All farmers in Canada produce high-quality agricultural products with an efficiency almost unparalleled around the world. At about 13% of disposable income, Canadians spend the second-lowest share on food. Quite frankly that is the root of the problem in agriculture, the fact that we only spend 13% of disposable income on food. That is a result of the low commodity prices we face in many commodities in agriculture. The reality is that as farmers have been forced to produce commodities at those low prices in the open marketplace, that has allowed consumers to be left with more disposable income to spend on other things.

I want to remind members of this committee that there are only two things you require to sustain life: One is shelter and one is food. The food is only costing 13% of disposable income and that is the root of the problem. If we are going to resolve the crisis facing agriculture around the world, consumers are going to have to understand that they will have to pay more of their disposable income for food. It may not be very much more, but it will be slightly more.

The philosophy of our marketing board is to allow the consumer to decide the size of the market and pay prices which permit dairy farmers to operate as a business, and our marketing board has the legislative authority to set those prices. To achieve these objectives requires three elements of national dairy policy: effective border controls, production discipline and cost of production based pricing. It is noteworthy that Canada's system of supply management is fully based on existing GATT provisions. This sharply contrasts with practices employed by the US and the European Community.

I am before you today partly because of my extreme concern about what seems to be happening in the current round of GATT negotiations. Based on recent reports, the industry is very concerned that the current GATT negotiations will eliminate Canada's right to have supply management using article XI 2c(i). This assault is being led by the United States.

In our view, it would be a terrible irony to see net farm incomes in agriculture harmonize by adding dairy and poultry to the existing crisis. The federal government so far has taken the negotiating position that GATT supply management provisions must be strengthened and clarified. They must not be allowed to deviate from that course. I hope all parties in the Legislature are able to support us in this endeavour.

The dairy industry is in the midst of an intensive lobbying activity to help solidify Canada's negotiating position. I want to divert from the notes for a moment and tell you why we were so concerned very recently. The chief agriculture negotiator for Canada, in the last week and one half to two weeks, on two occasions has suggested that Canada may not be able to deliver on its position vis-à-vis supply management.

The Canadian government has not changed its position, but I find it very serious when our chief trade negotiator for agriculture suggests we may not be able to deliver. This is happening because the Europeans appear to be moving towards accepting the US position of tariffication of all import structures which would lead to doing away with article XI 2c(i), the US waiver, section 22, and the variable import levies that the Europeans use. They are suggesting that by doing away with that and putting tariffs in place, they will be able to offer the same kind of protection. We reject that.

Article XI 2c(i) is what is required to be strengthened and clarified for supply management to work in Canada. If other countries under GATT choose to go another way, then this kind of provision should still be available for countries like Canada which are prepared to practise a domestic policy of supply management. We are also concerned that the current proposal under the aggregate measure of support would suggest that we could not operate our pricing programs and would also suggest that levies and those types of things paid by producers would be considered in the red category of the aggregate measure of support category and would have to be reduced.

I am also concerned for those people in the grains and oilseeds sector. The suggestion, as I understand it, is that GRIP, for instance, under the current proposal would be a red category subject to assistance. Any commodity-specific

program would be subject to reduction of upwards of 30% in the first year. I think we have to be concerned about that as an agricultural industry, but I am particularly concerned from the supply management point of view that we must have the federal government make it clear, and the message is very simple, that the federal government cannot sign a new GATT agreement without strengthening and clarifying article XI and making sure that the other elements do not impact on our supply-managed commodities.

If we want to take a sector of agriculture in Canada that in light of the problems we are facing is contributing to farm incomes, a stable source of farm income, we do not want to put it at the whims of the world marketplace in the short term by taking away that kind of support. It is extremely important that we protect that.

We in the supply-managed commodities, the egg board, the chicken board, the turkey board, hatching eggs, and milk and cream, are launching a major lobby campaign on October 1. We are meeting in Toronto. We will have about 400 to 500 representatives of our committees here in the province to outline our concerns about GATT, and that will launch a major lobby effort with our MPs in Ontario. The same thing is happening in every province in Canada to re-emphasize how important it is for the federal government to deliver on its promises. We look forward to your support.

Just before I leave off for questions, one other thing I would like to make you aware of is that our industry itself, even within supply management, is currently going through some difficulties. They have to do with the consumer trends towards fat and their views about cholesterol. This is having a significant impact on the size of our industry. In fact, over the last two years, the amount of industrial milk we can produce in this country has been reduced by 10%. Farmers in your respective ridings who are dairy farmers are feeling the pinch as we shrink the amount of milk required for industrial milk purposes, and we have done it by 10% over the last two years. It all has to do with the trend of movement away from normal-fat dairy products to lower-fat products.

For instance, every time a consumer buys a litre of 1% milk instead of 2% milk, it shrinks the amount of fat we require for ice cream. Even though he bought the same litre of milk as far as the consumer is concerned, it has meant that we are able to ship less off our farm into the ice cream industry, for instance.

We are going through that downsizing and it is putting pressure on our producers, as Mr McLean well knows from personal experience on his farm, I expect; that is happening and it is putting pressure on our own producers. We are attempting to overcome that as much as possible. We are changing our advertising approach, our information on health and nutrition, and we will be introducing multiple-component pricing on January 1, but dairy farmers are not isolated from the impact of changing markets.

I am prepared to answer any questions you might pose.

Mr Klopp: You mentioned supply management and I guess I have always been a strong supporter of the supply management system. I realize it does seem to give a farmer the right to go to the barn or wherever, and if he does a

good job, he will get paid for it. I am sure our caucus is fully supportive of you. But you know a lot of this is non-supply-management commodities, and over the years we have tried different programs. They have always said, "Next year the Chicago Board of Trade prices will go up; we roll the dice," or whatever.

There is a feeling out there that this is only going to be another short-term two or three years and then sanity will come back to the prices, the good old days, I guess, that will get \$3 for corn and it will only cost us \$2 to grow it. Do you think that is going to come back? Right now we are seeing \$80 wheat or whatever in the world market, etc. Do you think this is going to come back that quickly, or do you think farmers have to start looking at, how do we live within the costs in Ontario and get on with that, as you people have done?

Mr Core: If I take off my hat as chairman of the marketing board and speak as a farmer, my sense is that the price farmers receive for their commodities has to be resolved. They have to be higher. If agriculture is going to survive, and survive such that it can be an economic part of a rural community, then prices have to be improved.

I am afraid that what has been the price-setting mechanism for grains and oilseeds in the world is no longer working. I do not think there is a price discovery method out there that is responding to supply and demand. When you build on top of that the huge subsidies that have been happening in the US and Europe and that we have been attempting to try and match and just cannot do with the size of our treasuries, there has to be some resolve about how you obtain a fair price for the product the farmer is producing. I think the classic example you always hear of is the three cents of wheat and a loaf of bread. You could double that three cents and the consumer would never see it, but it is critical that the farmer does receive that additional three cents.

I think there has to be a coming together of farmers in trying to resolve some of those issues as well, working together to resolve the issues of recovering a fair price out in the marketplace.

1720

Mr Klopp: Do you have any suggestions?

Mr Core: I would like to think we could look, for instance, at what happened in supply management historically and talk about the issue of what is the domestic market in various commodities in agriculture. We recognize that some of our commodities in Canada trade on a global market, but a certain percentage of those commodities end up in a domestic market. I firmly believe there should be some realities of some kinds of two-price marketing schemes if you are prepared to control production within some parameters.

I am the first to admit, however, that farmers, we ourselves, find it difficult sometimes to work together. I hold up the milk and poultry industries as unique examples of the kinds of things you can achieve over a period of time when you work together as producers.

At the same time, I think we have to recognize that the whole GATT structure has to reduce the subsidies in various

countries around the world if there is ever to be any hope of some kind of free movement of grains and prices in the world.

Mr Waters: As to the 13% that you mentioned of disposable income that Canadians spend on food, from what I have heard in talking to people, most people would not be at all upset if we somehow found a way of giving the farmer more money for his product, on the guarantee that it was going to go to the farmer. The perception out there is that every time we give the farmer a cent, somebody above him takes two and he has a net loss of one. What I would ask you to comment on is, is that perception correct, and if so, how do we go about assuring that if we put some assistance in place, it goes to the person who most needs it, and that is the farmer?

Mr Core: I think the only way to assure yourself of that is to make sure the farmer receives that price for the price of his commodity when he sells it to the processor or whoever he sells it to. That is why it is supply management. We have the ability to take that fair price out of the marketplace. Any other time you try and put those dollars into producers' hands, there are all other kinds of things taking place.

I think collectively we have to work together to find that the price at delivery point for the farmer is the fair price and that it does end up in his hands, with no question. My concern, however, is that we have been able to do that in supply management, but my sense is that a lot of people still do not understand that. We are criticized very often for price changes that take place at the retail level. For instance, we are criticized and it is said, "The reason the price went up at retail is because there's a milk marketing board in Ontario." It has nothing to do with it. The milk marketing board is a group of dairy farmers working on behalf of dairy farmers, who are very much controlled in the way we change prices. There is a lack of understanding about how that price mechanism works in supply management. I would like very much to find a way to explain that to people, that we feel we are taking a fair price out of the chain and that we think other farmers need that same kind of opportunity.

Mr Hayes: John, I know that this government and Elmer Buchanan, the Minister of Agriculture and Food, have indicated publicly that this government certainly supports supply management and will support the efforts in the GATT round to protect article XI, or even make improvements in it. I just wanted to ask you a straightforward question: Do you have the support from the other provinces? This government is certainly supporting you 100% in that effort. Is there something that maybe the Minister of Agriculture and Food or the Premier could do to help in that situation?

Mr Core: I think we would very much appreciate the minister and the Premier communicating their concerns to their counterparts in Ottawa, and I think it also behooves us that the ministries in the various provinces work jointly together, because the impact within Ontario is exactly the same as the impact in Quebec or New Brunswick or Prince Edward Island as far as their supply-managed commodities

are concerned. I think any opportunity the government has to communicate with governments in other provinces is extremely supportive.

I want to emphasize to you as well that we support the dual policy approach. We recognize that grains and oilseeds for the foreseeable future will be competing in world markets and that Canada must try and lower the subsidy levels around the world so there might be some hope of price improvements in those commodities. We have to make our government understand that it can support a two-policy approach, which it has been doing, and that none of us should view this as a threat from one commodity to another.

Mr Hayes: I think that little story you alluded to about misunderstanding is very important. I received a call a few weeks back from the manager of a grocery store chain who informed me that it was the wrong time for the milk marketing board to get that seven-cents-a-litre increase. I said: "I'm not aware of this. I'll call you right back because we should be aware of this." It just so happens that it was the processors' association that actually had gone forward to get a seven-cents-a-litre increase in milk.

We are trying to put some things together and trying to get the message out to people, because I believe there is a lot of education that is necessary, but how do we head these things off? I know that unless someone calls and asks you, you do not really know. I think it requires a lot of education for the public on marketing boards by management.

Mr Core: It does. We try to make our decisions known widely at the time. Our last price increase for fluid milk was a year ago at this time at two cents a litre, and there have been no changes in fluid milk price at the farm gate since that time. We are talking about something modest like 1.5 to 2 cents, perhaps in December of this year. It is a problem in the marketplace that wholesale price changes or retail price changes do not necessarily reflect what happens at the farm gate. I think each of us has to take the opportunity to educate people when those things happen.

Mr Cleary: Thank you for your excellent presentation, John. The previous presenters said they did not feel they were going to have much more of a problem this year than they had in previous years collecting farm loans. I would like your comments on that.

Mr Core: My sense in talking to people is that there will be more problems in the coming year. I know that on our farm if we were simply in the cash crop business, and if when we started in 1975 we had simply been in the cash crop business, I think it is fair to say we would no longer be in business, or very soon we would not be in business. The dairy part of our farm has, there is no doubt in my mind, subsidized to some extent our cash crop enterprise.

You may ask, "Why do you bother continuing with the cash crops?" It is part of a rotation system from a conservation point of view. The rotation through the various crops allows us to minimize our use of pesticides and these kinds of things. We have the machinery, required for the farm operation, so we are able to absorb a lot of the cost associated with that into the dairy enterprise.

I think there is a real crisis facing those growers of cash crops in Ontario; I do not think there is any question

about it. It may not come overnight, but as we approach the spring when it is time to arrange for credit—and I have to emphasize, a lot of credit for putting grains in the ground in spring comes from suppliers, not from banks—I think we will find a very severe problem. My personal feeling is that this is going to be a long, hard winter for farmers in the province, and programs that governments can put in place to ease that will help. The same thing is happening in the United States. Dairy producers in the United States who do not have the protection of supply management, if you listen to them, they are telling the same stories as grains and oilseed producers in our province. They are under tremendous pressure.

Mr Cleary: I fully agree with you, coming from the part of Ontario I come from, and I occasionally deal with Quebec farmers too. They feel the very same as your comments.

One other thing I would like to ask you is that you mentioned, I think, the turkey growers. I would like your comments, because I know that in our part of Ontario, many in the community buy their turkeys at 67 cents a pound. In another country they bring their milk in at \$1.40 or \$1.50 a gallon. I would like your comments on that.

Mr Core: I am extremely concerned about the issue of cross-border shopping, which I think you are alluding to, Mr Cleary. I think we have to stand up as Canadians and decide whether we are Canadians or whether we are simply people looking for the cheapest consumer goods we can find anywhere in the world. I think it is high time we start talking about that issue. The United States is a different country. They have a different cost structure, different costs of producing goods. In milk, for instance, their government subsidizes hidden subsidization to their dairy farmers. It is 12 to 13 cents a litre. They are still doing it.

Mr Klopp: They're still going broke.

Mr Core: And they are still going broke, right. It is a different country and environment, a country with a different monetary policy.

I am quite frankly very concerned about what is happening in cross-border shopping, be it for dairy products or turkeys or VCRs or whatever it is. I am proud of being a Canadian and of being part of a country that has the kinds of social policies it has in place, from medicare on through, and I think we had better reconsider this. We are selling ourselves short as Canadians. Something has to be done about it.

1730

Mr Mancini: I would just like to thank the Ontario Milk Marketing Board for what I consider to be a pretty excellent brief. I think that in a few short minutes, you have given us the crux of the situation or reinforced in the minds of many of us what is happening to Ontario farm families.

I do not really have anything to add to what you have already said other than to say that I do not foresee any letup whatsoever in the agricultural war that is going on between the United States and Europe. Anybody who has been to Europe lately will see that the European farmers have never been so prosperous. They are deeply involved in their own political systems and they are going to fight to

keep that prosperity. It is going to be up to the Canadian government and all the provincial governments to make sure we can save as much of our agricultural industry as possible, and if we do not believe that, we have to widen our horizons a little bit and see what is going on elsewhere.

The Chair: Perhaps you want to respond to that.

Mr Core: I am concerned about what is happening in Europe with these messages our trade negotiators bring back. Our sense is that the Europeans are not moving off their original position, and that is what gives me double concern that our trade negotiators would be suggesting that. By putting a person or group of people in Europe over the next six to eight weeks as the trade negotiations develop, we are making sure that we have someone on the scene who can feed us back a reflection of what the European position is. We have had support for article XI from the European Community, Japan and some of the Scandinavian countries and we are hopeful that will continue on into the negotiations, but when we have mixed messages from trade negotiators, we must get concerned.

Mr Villeneuve: Thank you, John and your group, for a very good presentation. I am sorry I could not have been here earlier.

One thing that has got me very much concerned is developments fairly recently in the feather industry, the broiler industry in particular. We have a government and a minister that say they are fully and totally committed to supply management, and I can assure you that I am. However, when we see that the cost of production formula for the broilers was reduced by 12 cents a kilo by the Farm Products Appeal Tribunal and the minister went along with it, I say to you that now the broiler producers have the worst of two worlds. They produce under supply management with a quota and have apparently lost control of the price. Their cost of production formula was a sacred cow, I gather. I am not privy to whatever happened. I have a letter to the minister and I am sorry he is not here because I am waiting for the reply.

I was in Lucknow 12 nights ago and that was a pretty rough situation. Farmers are quite prepared to work together. They are not waiting for their neighbour to go broke to buy him out this time because they could well be the next one. What do you think of this situation in the broiler industry?

Mr Core: I am the first to admit I do not understand all the details, even in talking to people who have been involved in the issue. Hopefully, it will resolve itself. We have a structure in place, and through negotiation and working with the commission and the board itself, I am hopeful it can be resolved along with the minister and his staff. I do not know what the answer is or what the root of the problem is. All I know is it is the type of issue that collectively, if people put their minds to it, can be resolved.

Just to relate from the milk perspective, which is what I feel most free doing, we do have a cost of production system in milk that is publicly dealt with each year when we review it. We have had a system in place where we openly discuss it with the processors and we met last week with representatives of the Consumers' Association of

Canada—Ontario so I think it is in the best interest of all of us to work that through collectively.

I do not know exactly what their particular problem is, but I do know that the pillars of supply management I have talked about before are important. We have to be able to achieve cost of production pricing. If we are going to control our border and limit that, then we have to have a fair cost of production, and we have to be able to control our production, which we have been able to do. But all those three things have to go together; we cannot have two out of three of them. For instance, we cannot have border protection and control our production and then be at the whim of the open market for price. You have to have all three of those elements together, and it behooves any segment of industry to work with the whole industry, the producers, processors and consumers of the product, to resolve those issues. I hope they get resolved, but I cannot comment specifically on that problem.

Mr Villeneuve: I have some great difficulty when I hear on the one hand, and we have heard it again today, that we want everything supply managed, and I think that would be a good idea—you may not be able to do it, but it would certainly be a good idea—and then we see a supply-managed commodity being shot down in flames by the very people who are there to protect it, right at the provincial level.

I agree that article XI 2(c) of the GATT must be strengthened and protected, and it was my impression Europe was using that as its fallback position. I am not sure whether they have changed from that or not, and I am still wondering, but we are seeing right from within a 12-cent-kilo reduction from a cost of production formula.

It can also happen to you if it can happen to the broilers, and we, the public, without being told this is happening, say, "These guys are under supply management; they do not have any problems." We know the entire industry is under attack right now. Grains and oilseeds are at the front of the line, and you may not be too far behind, even under supply management, particularly when we see the cost of production bible being thrown out the window. I have great problems with that.

Mr Core: If the cost of production bible was thrown out, then that is not what should have happened. I do not know that for a fact. All I am saying is that cost of production has to be developed in a public way. You have to be able to justify what you are doing, which we have done. I assume that is being done. I think cost of production is important, and I think it is important we work with both sides of our industries, both producers and processors, to resolve these issues before they get to appeals tribunals or before they get somewhere along the lines. By mutually working together, I think we can protect that ability to have cost of production, at least I certainly hope so.

Mr Villeneuve: John, I firmly agree. There was a time, and I go back to the early 1980s, when the price of grain started to fall. We had dairy farmers saying, "Gosh, this is great." We had chicken farmers saying: "Boy, this is great. It is going to reduce my costs and I will be able to squeeze out a little more profit and let this cash cropper down the road suffer and make out or go broke." But the attitude is different now, because I think they are realizing the entire industry is under attack. It is bad enough we have to deal at the international level. I just returned from Cuba, where they are not food self-sufficient, and it is a terrible situation. Heaven forbid that socialism, whatever it is anywhere, would bring us to that kind of deal, but we are under attack right now. We have the capacity to feed the world, literally, and we have major problems.

I think we need to watch the broiler industry very closely. You, as people in the dairy business under supply management, really have to look at this one because it is under attack at the local level. The producers put out all their documentation saying, "This is the cost of production." Someone in the processing business said, "We cannot meet this cost of production because of competition," not just the raw product, but the cost to operate, mandated, many of these costs, by governments. It sounds great when you are making a political speech, but you have suffered as a producer. Chicken has not gone down for the consumer, not one bit; I am sorry. It may have gone down for the large users, ie, the Kentucky Fried Chicken type of thing, but it has not gone down for the large group of consumers, which we all are. Supply management sounds good and it sounds like you have it where you want it, but I can assure you it is under attack from within.

Mr Core: My same comment is that from a supply-managed point of view, we need those three elements, and cost of production is very fundamental to the process. The cost of production has to be open and transparent, and if we start to have problems in that area, then really we have lost one of the pillars of supply management, so cost of production is extremely important to us.

The Chair: Gentlemen, I want to thank you very much for your participation this afternoon, and we value your comments. We look forward to the report and trust you will be getting copies of it soon after it is prepared.

Mr Core: Thank you, Mr Chairman. You have a difficult job ahead of you, but I think it is extremely important to the future of agriculture in Ontario. We have to find a solution.

The Chair: That completes the representations this afternoon.

The committee adjourned at 1740.

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